

5

FINDINGS AND RECOMMENDED SPECIAL CONDITIONS

“S” ZONE APPROVAL AMENDMENT NO. SA2005-33, USE PERMIT AMENDMENT NO. UA2005-10 AND MAJOR TENTATIVE TRACT MAP NO. MA2005-3

Apton Plaza Mixed Use Development
230 North Main Street (APN 028-24-017 and -018)

Planning Commission Recommended Approval: July 13, 2005

FINDINGS

1. The amendments to the approved project will not create any environmental impacts not already considered in the Negative Declaration (EIA No. EA2003-1) adopted by the City Council on July 1, 2003.
2. The proposed project, as conditioned, is consistent with the General Plan and in compliance with policies 2.1-I-2 (Growth and expansion) and 2.a-I-12 (Residential Development) in that it is proposing a range of residential rental units in terms of size and cost and would be located within the already built environment.
3. The proposed project, as conditioned, continues to be consistent with the Mixed Use “MXD” and Transit-Oriented-Development “TOD” overlay district of the Milpitas Zoning Ordinance. In addition, the minor building and site modifications are compatible and aesthetically harmonious with the overall approved project and the surrounding development, both existing and future.
4. The proposed Use Permit for the exceedance of the setbacks, drive aisle width and a parking reduction for 28 spaces are not anticipated to have any adverse impacts on parking, traffic, noise, odors, or be detrimental to the health and safety of the public and therefore, will not negatively impact the surrounding community.
5. The proposed Use Permit for exceedance of setbacks, drive aisle width and a parking reduction for 28 spaces provide public benefits of a more uniform building and greater landscape and street opportunities and utilization of smart growth trends while providing an increased density and more affordable units.

SPECIAL CONDITIONS

1. **APPROVAL.** This “S” Zone Approval Amendment No. SA2005-33 is for the final design of a 4-story, mixed use residential and retail development consisting of 93 residential units and approximately 3,000 square feet of retail lease space in accordance with the plans approved on July 13, 2005, and as amended by the conditions below. Any major modification to the project as proposed will require an “S” Zone Approval Amendment by the Planning Commission. Minor modifications can be submitted to the Planning Division for processing as per Section 42.10 of the zoning code. (P)
2. **APPROVAL.** This Use Permit Amendment No. UA2005-10 is for exceedance of building setbacks along the portion of the north property to range from 6 to 30 feet, reduction in drive aisle width to 24 feet and for a parking reduction of 28 spaces (2 retail and 26 guest). Any

modification to these development standard deviations will require a Use Permit Amendment by the Planning Commission. (P)

3. **APPROVAL.** This Major Tentative Parcel Tract Map No. MA2005-3 is to create 1 commercial and 93 residential condominiums within the proposed building located on parcel 86-29-069, as depicted on the approved Tentative Tract Map dated July 13, 2005, and as amended by the conditions of approval. (P)
4. **ENVIRONMENTAL ASSESSMENT.** Prior to building permit issuance, the applicant shall submit a Phase II Environmental Assessment to the Planning Division and abide by any appropriate regulatory agency requirements. No building permit of any type shall be issued until a "Case Closure" or completion of site remediation letter from the appropriate regulatory agency is submitted to the Planning Division. (P)
5. **RETAIL.** No tallow generating businesses shall be permitted to occupy the retail tenant spaces. (P)
6. **PARK FEES.** Prior to certificate of occupancy issuance, the applicant shall pay a park-in-lieu fee in the amount of \$297,357. (P)
7. **TRAFFIC IMPACT FEE.** Prior to building permit issuance, the applicant shall contribute a "fair share" traffic impact fee in the amount of \$17,844 (based on a Midtown impact fee of \$113 per peak hour trip and a Montague Expressway impact fee of \$903 per peak hour trip). (P, T)
8. **PJ ACCOUNT.** If at the time of application for building permit, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
9. **PJ ACCOUNT.** If at the time of application for certificate of occupancy there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
10. **DENSITY BONUS.** The City shall implement Section 54.20-3 (A-2) (Density Bonus) with respect to affordable housing incentives which shall include a bonus of 4 dwelling units above the 89 units allowed in "MXD-TOD" district and concessions involving a setback deviation of the building along Railroad Court and a reduction in drive aisle width. The total number of 93 "for-sale" condominium units shall be provided in the residential development. (P)
11. **AFFORDABILITY.** Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 19 affordable housing units (at least 20% of allowed units without a density bonus) will be available at a housing cost affordable to very low and moderate-income households:

Income Level	No. of Units	Unit Type
Very Low	9	7-one bedroom units 2-two bedroom units
Moderate	10	5-one bedroom units 5-two bedroom units
TOTAL	19	

12. **AFFORDABILITY.** Prior to building permit issuance, the applicant shall provide to the City of Milpitas Redevelopment Agency, Executive Director for review and approval, a dispersment

plan exhibit illustrating the location of the affordable housing units within the development. The affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features and design and amenities as the fair market rate units in the development. (P)

13. **AFFORDABILITY.** The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable "for-sale" condominium units. The Restriction Agreements shall be approved as to form by the Milpitas City Attorney's Office, executed by the City Manager and recorded with the County of Santa Clara. The Restriction Agreements shall require that the long-term affordability of the "for-sale" condominium units shall remain in effect for fifty-five (55) years of the project. Any change to this requirement is subject to review and approval by the Milpitas City Council. (P)
14. **AFFORDABILITY.** The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (P)
15. **AFFORDABILITY.** The established affordable purchase price for the "for-sale" condominium units shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the "very low" limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories and State of California Redevelopment Agency Law. The final purchase price established for the "for-sale" condominium units shall not exceed the maximum allowable purchase price for "very low" households as defined in the above code sections. Said sale price shall be approved for consistency with the definitions by the Housing Division staff. (P)
16. **GENERAL.** The applicant shall comply with Planning Commission Resolution No. 168, a resolution of standard conditions for commercial development. (Items #1-4, 9, 11 (P))
17. **GENERAL.** This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations, and in conformance with the approved plans. (P)
18. **BUILDING ELEVATIONS.** Prior to building permit issuance, the applicant shall revise the elevations in order to address the following:
 - a) East elevation: indicate how far vertical elements project from building; redesign the change roof height created by the odd roofline; center windows on the two towers or add a second column of windows to balance; plane windows should match multi-paned windows used throughout the project; and incorporate stone veneer to projections.
 - b) North elevation: relocate garage vents at northwest corner further west closer to garage entrance and use stone veneer at this corner; enhance the garage exit feature by possibly adding a projection rather than flush, recess or adorn it; show trash enclosure on elevation; windows and balconies shown above and to the right of the garage are unbalanced; clarify what vertical vent-like elements are left of the corner tower balconies and provide details.
 - c) South elevation: windows with balconies are unbalanced; clarify if garage vents are going to remain along this elevation; single-paned windows shown to the right of the commercial units shall match multi-paned windows used throughout the project.
 - d) West elevation: enhance the garage entry feature by possibly adding a projection rather than flush, recess or adorn it.

- e) All elevations: reduce height of all towers to 60 feet or less; all windows must be recessed (minimum 4-6 inches); along the building's base, use veneer treatment in areas without garage vents and around garage entrance and exit and work with staff with vent placement; modify all elevations to be consistent with the floor plans of levels, especially at the southwest corner near the retail tower (planters are not shown on elevations); use of canopies is inconsistent especially on the south facing windows and on the projecting elements; provide details or typical catalogue examples of all canopies, decorative metal bracing, railings, windows, and doors proposed in order to see how these elements meet the building, their thickness, material, color, etc.; and provide material samples of stone veneer and pavers and details of all light fixtures. (P)
19. FLOOR PLAN. Prior to building permit issuance, the applicant shall submit a revised floor plan of the garage showing the following:
- a. Relocate the parking space in the southeast corner above the utility storage room and closest to the trash area and service elevator and stairs elsewhere in the garage. This space must be relocated and no loss of parking (no less than 173 spaces) may result.
 - b. Clearly marking the directionality of each driveway with appropriate signage and striping.
 - c. Stripe the 15-foot long area south of the garage entrance on North Main Street as "No Parking" to allow an adequate right turn radius off of northbound N. Main Street into the garage.
 - d. Deepen the throat of the garage entrance and show the security gate and card reader placement on the plans in a location that allows queuing for 2 vehicles off of the street, approximately 40 feet.
 - e. Incorporate some of the 10 required bicycle spaces into the parking garage for the residents.
 - f. Clearly mark each parking space for the assigned unit (including the handicap space).
 - g. For retail space 2 provide a rear exit door into the garage for trash enclosure access purposes. All trash must be taken through the garage and not out the front door along the sidewalk. (P)
20. LIGHTING. Prior to building permit issuance, the applicant shall submit a lighting plan for the building, site and streetscape pedestrian fixtures and details for light poles and other light fixtures to the Planning Division for review and approval. (P)
21. ROOFTOP EQUIPMENT. Prior to building permit issuance the plans shall show the locations of all HVAC units, skylights, sky tunnels and other rooftop equipment and details and include a cross section to ensure all equipment is screened. (P)
22. SIGNAGE. Prior to the approval of any signage for the multi-tenant, mixed-use development, a sign program application shall be submitted for Planning Commission approval. (P)
23. IRRIGATION. Prior to building permit issuance, the applicant shall submit a revised irrigation plan for all landscape areas (podium courtyard, building perimeter planters and streetscape) and include details of irrigation system for each planter (i.e. show all sprinkler head/bubbler locations). (P)
24. LANDSCAPE. Prior to building permit issuance, the applicant shall submit a revised landscape plan that includes the following:

- a. Reduce the number of canopy trees in the courtyard and replace with equal number, if not more, trees of a species with a smaller canopy.
 - b. Provide more shade accommodating tree species in both the northern and southern courtyard locations since these areas will be in shade most of the year.
 - c. Show the location and indicate the height of the relocated palms.
 - d. Clarify if real (grass) turf is proposed and if not remove turf areas altogether.
 - e. If driveway width can accommodate, add a narrow landscape area along west side of trash enclosure next to garage exit and plant a vine or other climbing species to screen the solid bare wall.
 - f. The numerous shrubs listed on the landscape plans need to be individually indicated in the planters to demonstrate a tiered landscape with taller shrubs in the back that adequately screen the vents and "ground" the building and increasingly shorter shrubs towards the front of the planter.
 - g. Provide additional or better screening shrubs around locations of utilities in planters along building frontages to reduce visual impacts of utilities and garage vents, which have increased in size. (P)
25. **GRAFFITI.** The property owner shall continue to comply with the City's Neighborhood Preservation Ordinance regarding the public nuisance issue of graffiti on the site. Should graffiti become an issue again in the future, prior to demolition of the abandoned buildings, the property owner shall comply with City's standards of removal or the City shall take action to obtain a court order to enter the property and abate the graffiti. Legal costs, staff time and all other costs associated with resolving this matter will be passed on to the property owner. Contact Chris Schaller at (408) 586-3078. (P, NP)
26. **EROSION CONTROL.** Implement standard best management practices (BMPs) for the control of erosion during the temporary stockpiling of excavated soils with fiber rolls and installing sand or gravel bags to minimize runoff impacts to halt runoff from entering the storm drainage system. (P)
27. **EROSION CONTROL.** During all construction activities on-site, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD:
- a. Watering all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
 - b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2 feet freeboard level within their truck beds.
 - c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
 - e. Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets.

- f. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more).
 - g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - h. Limit traffic speeds on unpaved areas to 15 mph.
 - i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - j. Plant vegetation in disturbed areas as quickly as possible.
 - k. Suspend excavation and grading (all earthmoving or other dust-producing activities) or equipment during periods of high winds when watering cannot eliminate visible dust plumes. (P)
28. **STORMWATER.** Prior to any permit issuance, the applicant shall submit a storm water control plan for the entire site including the courtyard that to the extent feasible, designs the project facilities to incorporate design concepts recommended in the Bay Area Stormwater Management Agencies Association's "Start at the Source" Design Guidance Manual for Stormwater Quality Protection (BASMAA 1999), including, but not limited to fossil filters, grading of impervious areas to landscaping and roofs draining to landscaped areas. (P)
29. **PARKING.** Per Building Department Notes to Applicant, provide accessible (handicap) parking for guests and retail onsite if occupancy of Apton Plaza is achieved before the public parking facility is constructed near the library. This may require an interim plan to allow public access to the garage with signage indicating handicap spaces available inside the garage. This also may prevent some units from being occupied in order to free up the accessible parking spaces. (P)
30. **COURTYARD.** Prior to building permit issuance the plans shall include details of benches, tables, fountains and other amenities in the courtyard area. (P)
31. **SOUNDWALL.** Prior to building permit issuance the plans shall include an elevation and details (material and colors) of the soundwall along the eastern property line. (P)
32. **STREETSCAPE.** Prior to building permit issuance, the applicant shall submit a revised streetscape plan that includes all of the streetscape amenities including the following revisions:
- a. Clarify streetscape trees and trees in planter along building on Weller are Bradford Pear (Pyrus Calleriana "New Bradford") not the Aristocrat and all other streetscape trees are European Hackberry (Celtis Australis) not Chinese Hackberry; as noted on plans.
 - b. Include pedestrian lights along all street frontages, interspaced with street trees with a spacing to achieve an average of 1-foot candle (approximately between every two trees).
 - c. Final streetscape design and materials along Weller Lane must compliment and match the final design of the Library side. (P)
33. **TRASH ENCLOSURE.** Prior to building permit issuance, the applicant shall submit elevations for the exterior trash enclosure. (P)
34. **TRASH MAINTENANCE.** The trash bins and trash/recycling enclosure areas shall be kept clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)

35. **TREE REMOVAL.** Prior to any protected tree (36-inch circumference or larger) removal, the applicant shall obtain a tree removal permit from the Trees and Landscape section of Public Works Department. (P)
36. **BUILDING COLOR.** Prior to building permit issuance the applicant must submit actual samples of the colors proposed and colored renderings of the other elevations. The final color schemes for the elevations shall be to the approval of the Planning Staff. (P)
37. **ROOF MATERIAL.** Prior to building permit issuance the plans shall indicate a slate or concrete tile or other high quality roof material (not asphalt composition) that complements the building in terms of style and color. (P)
38. **UTILITIES.** The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
39. **LAND SWAP.** Prior to final map recordation, the properties which are subject to the land exchange agreement between the City and developer for the portion of Railroad Court, N. Main Street, Weller Lane, Winsor Street and the Southerly portion of the project site shall be conveyed in fee to each party. Alternatively, the developer shall acquire the necessary land not currently owned by the developer, to make up the proposed subdivision distinctive boundary. (E)
40. **HOMEOWNERS ASSOCIATION.** Prior to final map recordation, the developer shall establish a homeowner association to define responsibilities, regulations and restrictions that apply to both residential and commercial entities. The homeowners association shall be responsible for the maintenance of the landscaping, walls, private streetlights, common area and private streets and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. (E)
41. **COMMUNITY FACILITIES DISTRICT.** Prior to final map recordation developer shall submit an executed petition to annex into, with respect to the property, the special taxes levied by a Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. No map will be recorded without receipt of an executed petition for annexation and consent and waiver executed by the property owners for the CFD for the establishment of special taxes. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
42. **COMMUNITY FACILITIES DISTRICT.** Prior to issuance of any building permit, all submitted petitions to annex into the CFD shall be finalized. The developer/property owner shall comply with all rules, regulations, policies, and practices established by the City with respect to CFD including, without limitation, requirements for notices and disclosure to future owners or residents. (E)
43. **CONDOMINIUM PLAN.** Prior to condominium plans recordation, the developer shall prepare and submit condominium plans for City review. (E)

44. **TENTATIVE MAP.** Make changes as noted on Engineering Services Exhibit "T" (dated 7/5/2005) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the parcel map or improvement plans will be accepted until this condition is satisfied. (E)
45. **FINAL MAP.** Prior to final map recordation developer shall submit to the City a digital format of the final map (AutoCAD format). To aid in project coordination, all maps, improvement plans, and other construction documents shall use Vertical Control that is based on NGVD 29 and Horizontal Control based on NAD83 (zone 3), and utilize the same Basis of Bearing of the maps and documents prepared for the City's library project. (E)
46. **FINAL MAP.** Prior to issuance of any building permit, the final map shall be recorded. (E)
47. **FINAL MAP.** The developer shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes, as shown on the Engineering Services Exhibit "T", dated 7/5/2005. (E)
48. **DEVELOPMENT FEES.** Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit. (E)
49. **LAND SWAP.** This approval is conditioned upon:
 - a. The developer executing the land exchange agreement with the City to exchange properties as shown on Engineering Services Exhibit "S" dated 6/22/04 and conveying the properties pursuant to the land exchange agreement.
 - b. No later than concurrently with the conveyance of land to applicant pursuant to the land exchange agreement with the City to exchange the properties, as shown on Engineering Services Exhibit "S" dated 6/22/04, the applicant shall compensate the City for the amount by which the fair market value of land conveyed to applicant exceeds the fair market value of land the applicant conveys to City, taking into consideration the acreage of the land.
 - c. The City Council adopted a Resolution of Vacation of portions of Weller Lane, North Main Street and Railroad Avenue since this land is proposed to be incorporated into the project, as shown on Engineering Services Exhibit "S" dated 6/22/04. Prior to building permit issuance, the Resolution of the partial vacations of Weller Lane, North Main Street and Railroad Court as public roadway and public utility easement shall be recorded. (E)
50. **FLOOD ZONE.** Prior to any building permit issuance, the developer shall obtain a Letter of Map Amendment (LOMA) from FEMA to remove that portion of the project site that will become part of the property as part of the land-exchange with the City, from Special Flood Hazard Zone area. The underground parking structure as proposed is not permitted within the existing Special Flood Hazard Zone AH (elevation 12). (E)
51. **PARKING.** No on-street parking will be permitted on Weller Lane between Winsor and N. Main Street. Applicant shall install necessary no parking signs along that portion of Weller lane. (E)
52. **PUBLIC IMPROVEMENTS.** As provided for in the Land Exchange Agreement, the developer shall pay an in-lieu fee for the cost of the relocation of the wet Public Utilities (storm, water, sewer) at Weller Lane and a portion of the Main/Weller intersection signal modifications. The developer's obligation for payment in-lieu of designing and constructing the required improvements is set at \$144,910. In addition to the foregoing, developer shall design and construct any lateral connections to Public Utilities, which are necessary to provide services to

the subject property. The developer shall design and install all improvements north of the curb and gutter along Weller, including the north curb and gutter, to the satisfaction of the City Engineer. All the streetscape improvements on the North side of Weller, including but not limited to street trees, decorative sidewalk paving, and street furniture such as benches, pedestrian lighting, bike shelters/racks, tree well grates and garbage receptacles, shall be consistent with the south-side improvements. The developer shall coordinate the design and construction of these improvements with the library Project. The in-lieu fee does not cover the cost of the removal of the abandoned public utility pipelines. The developer is responsible for the cost of the removal if deemed necessary for the development of the project. (E)

53. **PUBLIC IMPROVEMENTS.** Prior to any building permit issuance, the developer shall obtain design approval and provide a bond for all necessary public improvements along N. Main Street and Railroad Court, including but not limited to curb and gutter, pavement, sidewalk, undergrounding of existing overhead utilities, street tree planting, signage and striping, bus stops, street lights, fire hydrants, storm drain, sewer and water services, and street furniture improvements such as benches, pedestrian lighting, bike shelter/rack, tree well grates, and garbage receptacles along N. Main Street, and Railroad Avenue, as further shown on Engineering Services Exhibit "S", dated 6/22/2004. The developer shall also design and construct all improvements north of the curb and gutter along Weller, including the Weller Lane north curb and Gutter. The applicant shall construct subject improvements prior to building occupancy permit issuance. These required improvements shall comply with the City's Development standards and Design guidelines and Streetscape plans approved for Milpitas Midtown Specific Plan. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. To aid in project coordination, all maps, improvement plans, and other construction documents shall use Vertical Control that is based on NGVD 29 and Horizontal Control based on NAD83, and utilize the same Basis of Bearing of the maps and documents prepared for the City's library project. The developer shall also execute a public improvement agreement, the performance of which shall be secured in an amount equal to 100% of the City Engineer's estimate of the construction cost for faithful performance and 100% of the City Engineer's estimate of the construction cost for labor & materials. (E)
54. **CONSTRUCTION STAGING.** The developer shall coordinate its construction schedule and activities with the City's Library project. No portion of City's property within the proposed library site will be available for construction staging without City's prior written approval. (E)
55. **UTILITIES.** Prior to building permit issuance, developer shall design all above ground utilities on Weller Lane (except for fire equipment which will remain in the landscape planter again south façade) to be relocated to a common area near the southeast corner tower. The plans shall include details of proper screening of the equipment without precluding rear building access. (E)
56. **UTILITIES.** Prior to building occupancy permit issuance the developer shall underground all existing wires on the utility poles number 2 to 5, and remove poles number 3, 4 and 5, as shown on the Engineering Services Exhibit "S", dated 6/22/2004. All proposed utilities within the proposed development shall also be undergrounded. Within 60 days of City Council approval of this project, the developer shall make an application with PG&E for its service connections to this site. The applicant is also required to design, construct and coordinate its dry utilities (phone, electric, gas, cable, etc.) construction with Library project and other affected agencies

including but not limited to PG&E. If mutually agreed, the City may underground the overhead wires between poles 2 and 5 and the developer is required to reimburse the City for the actual cost of this undergrounding. The undergrounding of overhead utilities is not covered by the fees described in Condition No. 52. (E)

57. **GRADING PLAN.** At the time of building permit plan check submittal the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities including overland flow as shown on the existing federal flood map. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior any building permit issuance. (E)
58. **STORMWATER.** The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities that disturb one acre or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
59. **UTILITIES.** Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
60. **UTILITIES.** Multistory buildings as proposed require water supply pressures above that which the City can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The Applicant shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
61. **UTILITIES.** The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division:
- A. Water Service Agreement(s) for water meter(s) and detector check(s).
 - B. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
- Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)
62. **SITE DISTANCE.** The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)

63. UTILITIES. In accordance with Chapter 5, Title VIII (Ord. No. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:

- a. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord. No. 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check submittal. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection. (E)

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)

64. UTILITIES. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements. (E)

65. TRASH ENCLOSURE. Prior to occupancy permit issuance, the applicant shall construct trash enclosure(s), for Solid Waste Services. City Engineer's review and approval is required prior to construction of the trash enclosure. The proposed trash enclosure must meet the BFI criteria to support self-contained, roll-off compaction equipment for separate recycle and trash services, as listed below. Applicant advised that the following special conditions to support self-contained, roll-off compaction equipment for separate recycle and trash services shall be required due to limitations of enclosure location and mixed-use development:

- a. Use of two, 25 cubic yard capacity, self-contained, roll-off compactors shall be used; one for trash and one for recyclables.
- b. Enclosure construction to include the following:
 - i. Interior dimensions of 23-feet X 24-feet.
 - ii. Walls and ceiling no lower than 10-feet in height.
 - iii. Conduit to support compactor hydraulics.
 - iv. Beam at inside enclosure median to support 2 sets of 12-foot length gates (doors at 6-feet each).
 - v. J-hooks with receiving holes at opened and closed positions for each gate.
 - vi. Compactor-compatible ground rails installed and extending 2-feet beyond and under the gates.
 - vii. Compactor-compatible 3 cubic yard, "pushable/trainable" front load bins.
- c. Reinforced concrete pad for enclosure and service access shall:
 - i. Be minimum of 8-inch thick and accommodate not less than 60,000 pounds.
 - ii. Provide no greater than 2% slope at walkway between curb-cut and enclosure wall.
- d. All other enclosure standards shall be required per the Development Guidelines for Solid Waste Services.
- e. Service Frequency: Recycle and trash compactors may be placed on "on call" service during first occupancy phase. Estimated service frequency for recycle compactor at full occupancy is twice a week. Estimated service frequency for trash compactor at full occupancy is once a week. Scheduled once-a-week frequency shall apply for trash compactor upon achievement of 90% occupancy.

- f. Effective Recycling Program Participation: Recycling compactor shall be charged at the higher, trash rate should "contaminates" (materials not accepted in City of Milpitas/BFI Residential Recycling Program), exceed 20% of each collection.
 - g. On-site Recycling Program Management: Adequate space for recycling shall be maintained within the residential "Trash Rooms" and commercial waste area, including effective separation from trash and liquids.
 - h. On-site Recycling Program Promotions: Residents and commercial tenants shall be advised of effective recycling program participation on a move-in and annual basis by the property manager.
 - i. Location of trash chutes and rooms is acceptable. Trash rooms shall not be less than 6-feet x 9-feet INTERIOR dimensions. (E)
66. TRASH ENCLOSURE. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for both commercial and residential use:
- a. Maintain an adequate level of service for trash collection.
 - b. Maintain recycling services including separate services for beverage containers.
- After the applicant has started its business and building is occupied, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
67. ENCROACHMENT PERMITS. Prior to any work within public right of way or City easement, the developer shall obtain necessary encroachment permit(s) from City of Milpitas Engineering Division. (E)
68. VACATION. Prior to any permit issuance, the developer shall successfully process an application through the City to vacate that excess portion of the existing Public Service Utility Easements along vacated Weller Lane, N. Main Street and Railroad Avenue. (E)
69. TIME EXTENSION. The executed agreements and conditions of approval associated with this project are based on the current cost sharing and coordination of all parcels proposed for development in this immediate area. Therefore, any future request for a time extension will necessitate re-review of the agreements and conditions of approval for possible modification to address changed circumstances. (P)

Planning Division = (P)

Engineering division = (E)

Transportation Division = (T)

Neighborhood Preservation = (NP)



HEXAGON TRANSPORTATION CONSULTANTS, INC.

RECEIVED

March 18, 2004

APR 7 2004

Mr. Joe Oliva
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, California 95035

CITY OF MILPITAS
PLANNING DIVISION

Re: Traffic Study for the Proposed Apton Apartments in Milpitas

Dear Mr. Oliva:

This letter report presents the results of the traffic study prepared for the proposed residential and retail development located at 230 Main Street and 198 Weller Lane in Milpitas, California. The site is currently vacant. The project as proposed would consist of 96 apartment units and approximately 3,000 square feet of retail space. It would also involve a land swap between the developer and the City of Milpitas. The private property in the land swap is located on the southern end of the site. The City property is located along Weller Lane and in the median area at the southeast corner of the Main Street/Railroad Avenue intersection. Access to the site would be provided via Railroad Avenue and Main Street. Parking would be provided onsite and along Main Street, adjacent to the site. The project location and study intersections are shown on Figure 1. The proposed site plan, delivered to Hexagon on March 17, 2004, is shown on Figure 2.

The potential impacts of the project were evaluated in accordance with the standards set forth by the City of Milpitas and the Congestion Management Program (CMP) of Santa Clara County. The study included analysis of AM and PM peak-hour traffic conditions for three signalized intersections and three unsignalized intersections. In addition, the proposed site plan was evaluated in terms of site access, onsite circulation, and parking. The study intersections include:

1. Abel Street & Weller Lane
2. Main Street & Weller Lane
3. Main Street & Carlo Street (unsignalized)
4. W. Calaveras Boulevard & Abel Street*
5. Main Street & WB SR-237 Off-Ramp (unsignalized)
6. Main Street & Railroad Avenue

(*) denotes CMP intersection.

Surrounding Transportation Facilities

Regional access to the project is provided via Interstate 680 (I-680), I-880 and State Route 237 (SR 237). Direct access to the current site is provided via Railroad Avenue. Other major facilities in the vicinity include Abel Street and Main Street. These facilities are described below.

I-680 is a north/south freeway traversing the eastern portion of Milpitas. This freeway connects the inland East Bay communities to the north with San Jose to the south. I-680 has six lanes north of SR 237 and eight lanes south of SR 237. A northbound HOV lane is currently under construction on I-680 north of Calaveras Boulevard. A southbound HOV lane north of Calaveras Boulevard was recently completed.

PARKING REQUIREMENTS:
 1st FLOOR: 27 STALLS
 2nd FLOOR: 28 STALLS
 3rd FLOOR: 28 STALLS
 4th FLOOR: 28 STALLS
 5th FLOOR: 28 STALLS
 6th FLOOR: 28 STALLS
 7th FLOOR: 28 STALLS
 8th FLOOR: 28 STALLS
 9th FLOOR: 28 STALLS
 10th FLOOR: 28 STALLS
 11th FLOOR: 28 STALLS
 12th FLOOR: 28 STALLS
 13th FLOOR: 28 STALLS
 14th FLOOR: 28 STALLS
 15th FLOOR: 28 STALLS
 16th FLOOR: 28 STALLS
 17th FLOOR: 28 STALLS
 18th FLOOR: 28 STALLS
 19th FLOOR: 28 STALLS
 20th FLOOR: 28 STALLS
 21st FLOOR: 28 STALLS
 22nd FLOOR: 28 STALLS
 23rd FLOOR: 28 STALLS
 24th FLOOR: 28 STALLS
 25th FLOOR: 28 STALLS
 26th FLOOR: 28 STALLS
 27th FLOOR: 28 STALLS
 28th FLOOR: 28 STALLS
 29th FLOOR: 28 STALLS
 30th FLOOR: 28 STALLS
 31st FLOOR: 28 STALLS
 32nd FLOOR: 28 STALLS
 33rd FLOOR: 28 STALLS
 34th FLOOR: 28 STALLS
 35th FLOOR: 28 STALLS
 36th FLOOR: 28 STALLS
 37th FLOOR: 28 STALLS
 38th FLOOR: 28 STALLS
 39th FLOOR: 28 STALLS
 40th FLOOR: 28 STALLS
 41st FLOOR: 28 STALLS
 42nd FLOOR: 28 STALLS
 43rd FLOOR: 28 STALLS
 44th FLOOR: 28 STALLS
 45th FLOOR: 28 STALLS
 46th FLOOR: 28 STALLS
 47th FLOOR: 28 STALLS
 48th FLOOR: 28 STALLS
 49th FLOOR: 28 STALLS
 50th FLOOR: 28 STALLS
 51st FLOOR: 28 STALLS
 52nd FLOOR: 28 STALLS
 53rd FLOOR: 28 STALLS
 54th FLOOR: 28 STALLS
 55th FLOOR: 28 STALLS
 56th FLOOR: 28 STALLS
 57th FLOOR: 28 STALLS
 58th FLOOR: 28 STALLS
 59th FLOOR: 28 STALLS
 60th FLOOR: 28 STALLS
 61st FLOOR: 28 STALLS
 62nd FLOOR: 28 STALLS
 63rd FLOOR: 28 STALLS
 64th FLOOR: 28 STALLS
 65th FLOOR: 28 STALLS
 66th FLOOR: 28 STALLS
 67th FLOOR: 28 STALLS
 68th FLOOR: 28 STALLS
 69th FLOOR: 28 STALLS
 70th FLOOR: 28 STALLS
 71st FLOOR: 28 STALLS
 72nd FLOOR: 28 STALLS
 73rd FLOOR: 28 STALLS
 74th FLOOR: 28 STALLS
 75th FLOOR: 28 STALLS
 76th FLOOR: 28 STALLS
 77th FLOOR: 28 STALLS
 78th FLOOR: 28 STALLS
 79th FLOOR: 28 STALLS
 80th FLOOR: 28 STALLS
 81st FLOOR: 28 STALLS
 82nd FLOOR: 28 STALLS
 83rd FLOOR: 28 STALLS
 84th FLOOR: 28 STALLS
 85th FLOOR: 28 STALLS
 86th FLOOR: 28 STALLS
 87th FLOOR: 28 STALLS
 88th FLOOR: 28 STALLS
 89th FLOOR: 28 STALLS
 90th FLOOR: 28 STALLS
 91st FLOOR: 28 STALLS
 92nd FLOOR: 28 STALLS
 93rd FLOOR: 28 STALLS
 94th FLOOR: 28 STALLS
 95th FLOOR: 28 STALLS
 96th FLOOR: 28 STALLS
 97th FLOOR: 28 STALLS
 98th FLOOR: 28 STALLS
 99th FLOOR: 28 STALLS
 100th FLOOR: 28 STALLS
 TOTAL: 28 STALLS

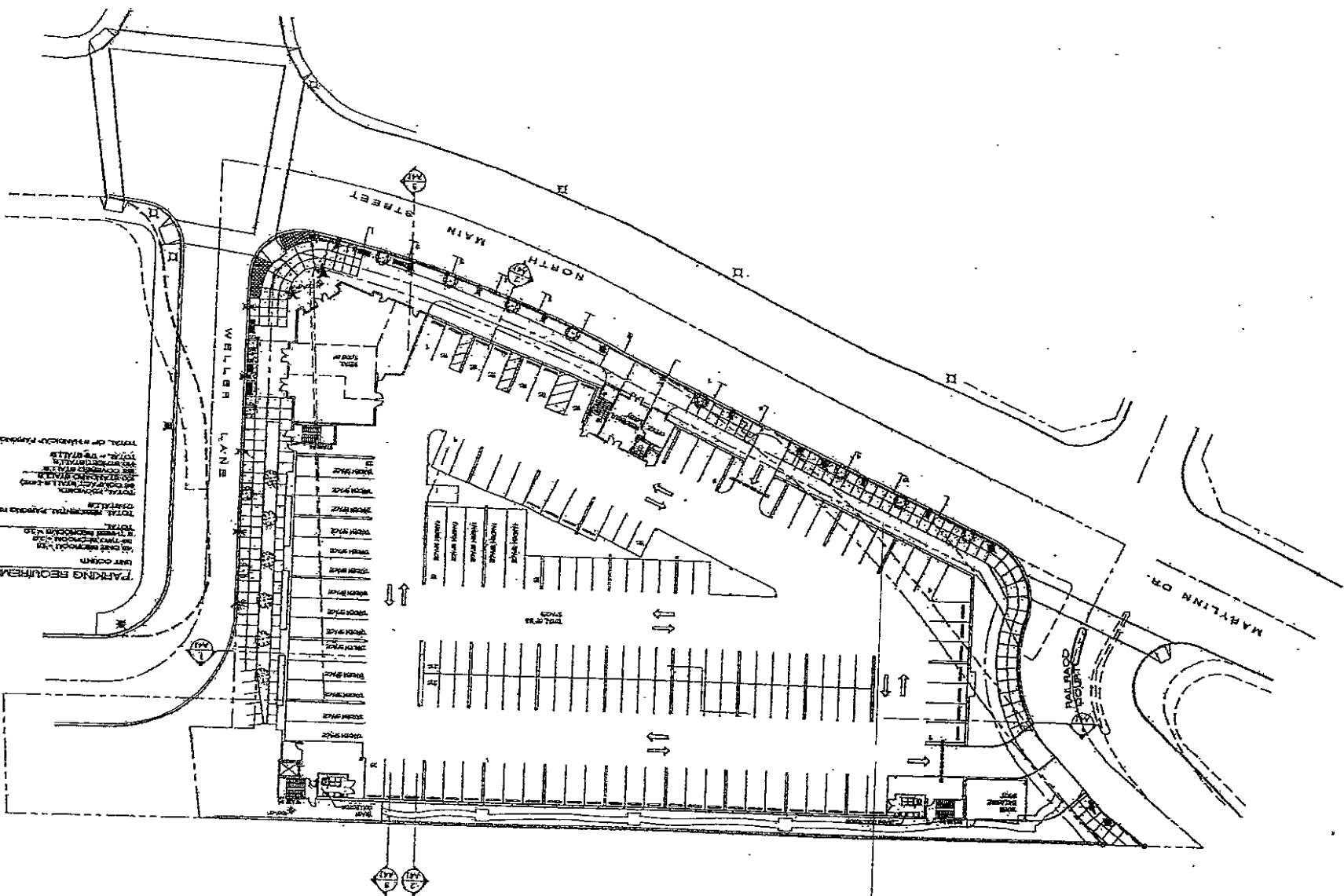


Figure 2
SITE PLAN
Apton Apartments - Milpitas

Table 1
Trip Generation Estimates

ID	Use	size	unit	AM Peak Hour						PM Peak Hour					
				Rate			Trips			Rate			Trips		
				In	Out	Total	In	Out	Total	In	Out	Total	In	Out	Total
[A]	Residential ₁	96	units	0.08	0.45	0.53	8	43	51	0.49	0.25	0.74	47	24	71
[B]	Mixed-use reduction₂						1	1	2				1	1	2
[C]=[A-B]	Total Residential						7	42	49				46	22	68
[D]	Retail ₂	3,000	ksf	3.08	3.33	6.41	9	10	19	2.81	2.12	4.93	8	6	15
[B]	Mixed-use reduction₃						1	1	2				1	1	2
[E]=[D-B]	Total Retail						8	9	17				7	6	13
[C+E]	Total Trips (with mixed-use reduction)						15	51	66				53	27	81

Note: Numbers may not add due to rounding.

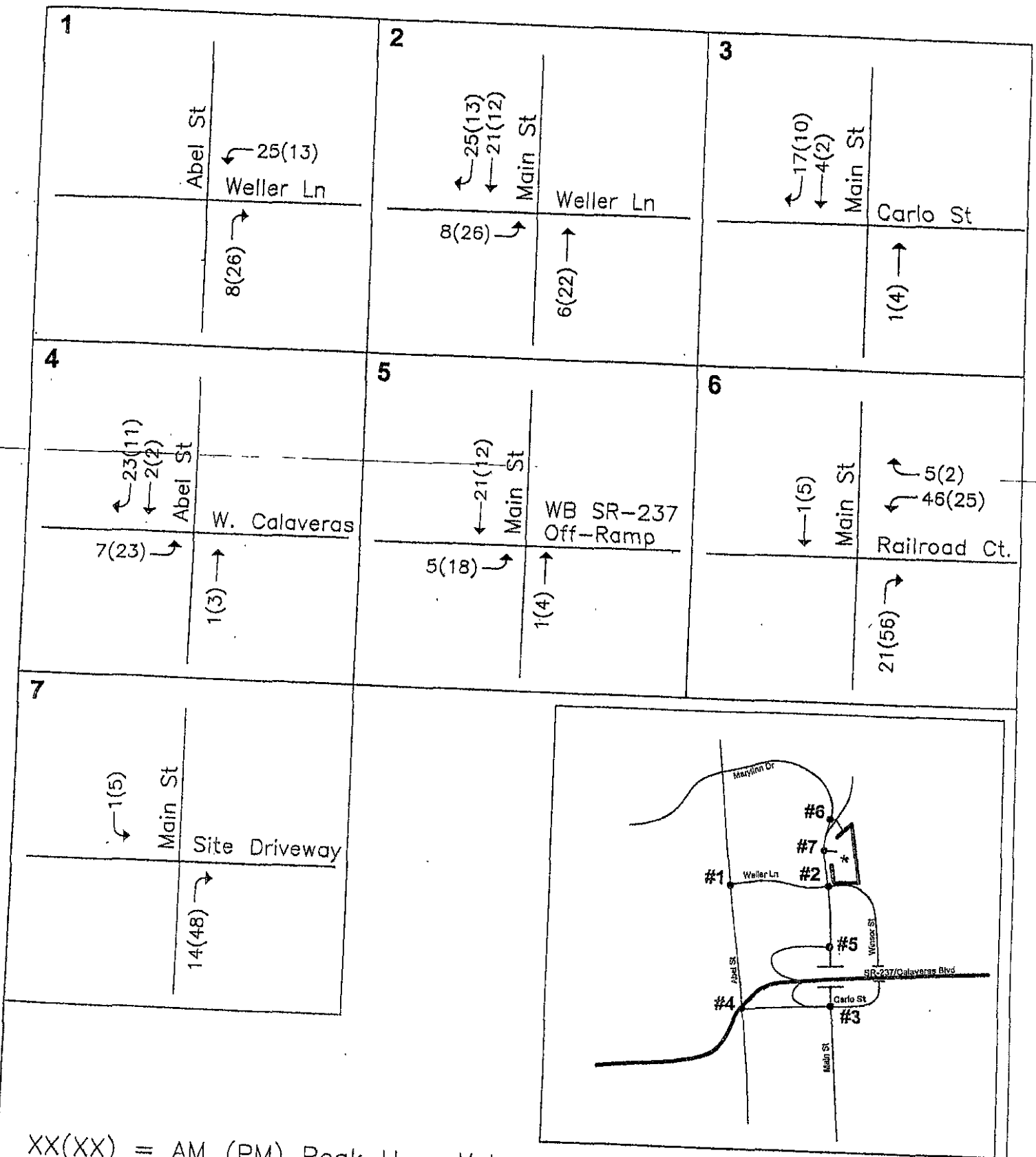
- 1) Based on ITE Apartment Trip Generation Rate (Land Use Code 220)
- 2) Based on ITE Specialty Retail Trip Generation Rate (Land Use Code 814)
- 3) Based on VTA mixed-use trip reductions for housing/retail uses -13% off the smaller trip generator

The trip distribution pattern for the proposed project was estimated based on existing travel patterns on the surrounding roadway system and the locations of complementary land uses. The trip distribution pattern is shown graphically on Figure 3. The peak-hour trips generated by the proposed development were assigned to the roadway system in accordance with the trip distribution pattern. Figure 4 shows the project trip assignment.

Data Collection and Methodology

Traffic conditions were evaluated for the following scenarios:

- **Existing Conditions.** Existing conditions were represented by existing peak-hour traffic volumes on the existing roadway network. Existing traffic volumes were obtained from new counts and recent traffic studies.
- **Background Conditions.** Background conditions were represented by background traffic volumes on the existing roadway network. Background traffic volumes were estimated by adding to existing peak-hour volumes the projected volumes from approved but not yet completed developments (see Appendix for list of approved projects). The latter component is contained in the City of Milpitas Approved Trips Inventory (ATI). In addition, traffic from the Senior Center on Weller Lane, which is currently vacant, was added into the background conditions. Based on its potential occupancy, the senior center was estimated to generate approximately 30 trips during each of the AM and PM peak hours. All intersection lane configurations were assumed to be the same as under existing conditions.



XX(XX) = AM (PM) Peak Hour Volumes

Figure 4 **PROJECT TRIP ASSIGNMENT**

Apton Apartments — Milpitas

Table 2
Intersection Level of Service Summary

	Existing						Background						Project					
	AM Peak Hour			PM Peak Hour			AM Peak Hour			PM Peak Hour			AM Peak Hour			PM Peak Hour		
	Delay	V/C	LOS	Delay	V/C	LOS	Delay	V/C	LOS	Delay	V/C	LOS	Delay	V/C	LOS	Delay	V/C	LOS
Abel Street & Weller Lane	7.2	0.37	B	7.5	0.43	B	7.3	0.38	B	7.5	0.43	B	7.7	0.39	B	7.6	0.45	B
Main Street & Weller Lane	13.2	0.29	B	15.3	0.37	C	13.2	0.29	B	15.3	0.37	C	14.5	0.34	B	16.3	0.42	C
Main Street & Carlo Street (unsignalized)	7.0	n/a	B	23.5	n/a	D	8.1	n/a	B	38.1	n/a	E	8.1	n/a	B	38.1	n/a	E
Calaveras & Abel Street*	35.9	0.96	D	32.8	0.96	D	48.1	1.02	E	36.3	0.98	D	52.8	1.03	E	38.3	1.00	D
Main St. & WB SR-237 Off-Ramp (unsignalized)**	5.9	n/a	B	4.8	n/a	A	5.9	n/a	B	4.8	n/a	A	6.2	n/a	B	5.4	n/a	B
Main St. & Railroad Ct. (unsignalized)**	4.8	n/a	A	5.2	n/a	B	4.8	n/a	A	5.2	n/a	B	5.3	n/a	B	5.8	n/a	B

* denotes CMP Intersection

** Two way stop controlled intersection. Delay represents worst leg of intersection approach.

Project LOS calculation includes change in WB lane configuration (one shared right-through-left turn lane)

□ = denotes unacceptable LOS according to applicable standard, LOS D or better for City of Milpitas, LOS E or better for CMP

Mr. Joe Oliva
March 18, 2004
Page 11 of 11

Parking. Parking for the proposed project would be provided onsite in a garage and along the streets adjacent to the site. The garage parking would include some tandem parking spaces. The site plan shows that the parallel parking spaces along Main Street would allow for an adjacent 15.5-foot northbound travel lane. The City requires a minimum lane width of 12 feet for one-way operations. Thus, the parallel parking layout on Main Street is sufficient per the City standards. The City of Milpitas Zoning Ordinance for mixed-use development specifies the required parking supply for retail/residential developments.

- **Recommendation:** The project should comply with City of Milpitas parking supply standards or demonstrate that the parking supply provided would accommodate the anticipated demand.

Site Circulation. Aside from the proposed parallel parking on Main Street, most of the vehicle/pedestrian circulation would take place on site. All on site parking stalls would be oriented at 90 degrees to their respective drive aisles. All drive aisles would accommodate two-way traffic. The vehicle and pedestrian circulation was evaluated to identify blind spots, pedestrian/vehicle circulation, and other specific onsite circulation issues. No irregularities were identified.

This concludes our analysis of the proposed residential/retail development in Milpitas. Please do not hesitate to contact us with any questions.

- Sincerely,

HEXAGON TRANSPORTATION CONSULTANTS, INC.



Brett Walinski
Sr. Project Manager

RECEIVED

APR 29 2004

CITY OF MILPITAS
PLANNING DIVISION

LEVEL OF VIBRATION IN THE MARITZ APARTMENTS
LOCATED AT THE CORNER OF NORTH MAIN STREET
AND WELLER LANE IN MILPITAS, CALIFORNIA

To: Mr. Badru Valani
Managing Director
MARITZ PROPERTIES INC.
46509 Mission Boulevard
Fremont, CA 94539

Mr. James P. McClelland A.I.A.
Principal

Mr. John Maple, FARA/ A.I.A.
Principal

MAPLE DELL + McCLELLAND
Architects, LLP
1646 North California Blvd. Suite 650
Walnut Creek, California 94596

By: Dr. Leslie E. Penzes
Certified Acoustical Consultant, P. E.

Mr. Joseph G. Morrow
Acoustical Consultant, C.M.

DR. PENZES & ASSOCIATES
12475 Bodega Way
San Diego, CA 92128

April 28, 2004

Method of Solution

Ref.'s 1, 2 and 3 only discuss ground motion without the dynamic response of the building. It is desired that the flexibility of the building is also estimated in our analysis. The response due to the flexibility of a building during ground motion excited by the train motion will also be estimated. Therefore, this factor will be used related to the ground motion of a building and this value can be compared with the curve of the CALTRANS Vibration Standard.

Analysis of the Train Induced Vibration of the Maritz Apartments

The distance between the Maritz Apartments and the centerline of the railroad track is 43 Ft (13.1 m). The report "Ground Vibration Study, Beresford Terrace, Milpitas, California" (Ref. 1) presents a ground velocity in the range of 0.0305 in/sec to 0.0405 in/sec at a distance of 50 Ft. For this test, the longest train had 3 engines and pulled 52 cars at a moderate speed of 25 - 30 MPH. The California Landing Planned Unit Development, Milpitas, California, Final Environmental Impact Report (Ref. 2) shows a 50% reduction in displacement speed from a distance of 50 Ft to 120 Ft. With this information, the Maximum Ground Motion is:

$V_{\text{Max, Ground}} = 0.0405 \times 7(0.005/70) = 0.041 \text{ in/sec} = \underline{1.03 \text{ mm/sec}}$
which is approximately 1 mm/sec (Point A, Fig. 4-1).

Let us assume a factor of 1.75 (75%) for the magnification of motion of the building, then, the Maximum Velocity is (Point B, Fig. 4-1).

$V_{\text{Max, Building}} = 1.75 \times 1.0 \text{ mm/sec} = \underline{1.75 \text{ mm/sec}}$

Values of peak velocities less than 2 mm/sec will not cause any damage even to historically significant buildings and the above value is far from the Architectural Damage Risk of 5 mm/sec.

If CALTRAN's recommendation by Fig. 4-1 is followed, 1.75 mm/sec may cause some feeling of vibration.

However, the magnification factor of 75% is possible, but this value is not certain and if the 1.0 mm/sec is applied, then vibration may be very lightly felt.

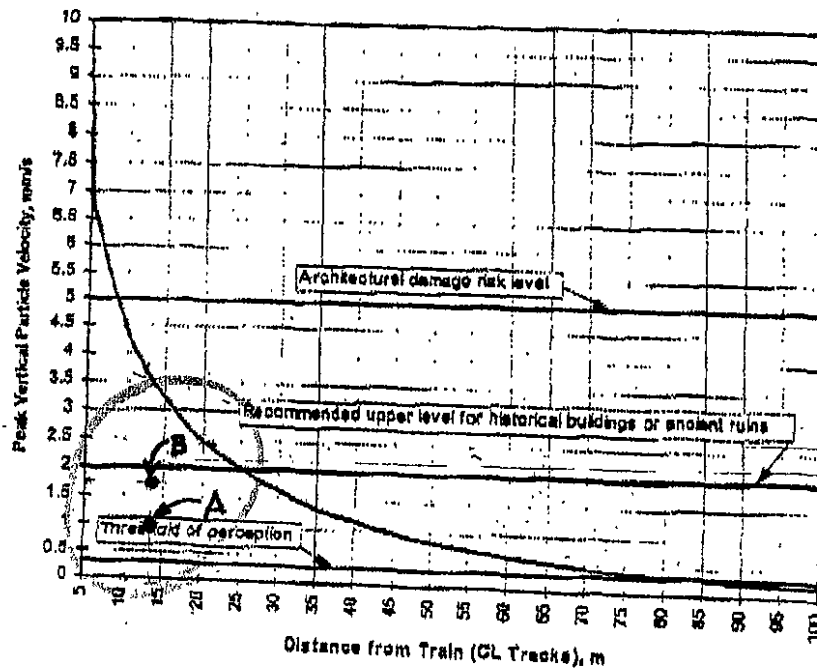


Figure 4-1: Maximum Vibration Levels from Train Operations by Distance

A = GROUND MOTION

B = GROUND MOTION AND BUILDING MOTION

**VI.
CONFLICT
OF INTEREST**

Chair Lalwani asked if the Commission has any conflict of interest on tonight's agenda. There were no Commissioners that identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Williams/Azevedo

AYES: 7

NOES: 0

**VIII.
ELECTION OF THE
OFFICERS**

Chair Lalwani turned the gavel over to Tambri Heyden, Secretary of the Planning Commission, who opened the nominations for Planning Commissioner Chair.

Chair Lalwani nominated Vice Chair Garcia for Chair.

Vice Chair Garcia accepted the nomination.

Commissioner Azevedo nominated Commissioner Williams for Chair.

Commissioner Williams accepted the nomination.

Ms. Heyden took a vote for each nominee and Commissioner Williams was elected Planning Commission Chair with 4 votes over 3 votes cast for Vice Chair Garcia.

Ms. Heyden opened nominations for Planning Commission Vice Chair.

Commissioner Azevedo nominated Commissioner Galang for Vice Chair.

Commissioner Galang accepted the nomination.

Commissioner Lalwani nominated Commissioner Mohsin for Vice Chair.

Commissioner Mohsin accepted the nomination.

Ms. Heyden took a vote for each nominee and Commissioner Galang was elected Planning Commission Vice Chair with 4 votes over 3 votes cast for Commissioner Mohsin.

**IX.
CALENDAR**

CONSENT

There were no items on the consent calendar.

X. PUBLIC HEARING

**1. "S" ZONE APPROVAL
AMENDMENT NO.
SA2005-33, USE PERMIT
AMENDMENT NO.
UA2005-10 AND MAJOR
TENTATIVE TRACT
MAP NO. MA2005-3**

Staci Pereira, Assistant Planner, presented a request to amend a previously approved mixed use development to reduce the number of residential condominium units from 96 to 93, modify the Density Bonus approval to exceed the maximum density by 4 units, site and architectural modifications and to not provide 28 required parking spaces at 230 North Main Street. Ms. Pereira recommended to the City Council approval of the amended Density Bonus, "S" Zone Approval Amendment No. SA2005-33, Use Permit Amendment No. UA2005-10 and Major Tentative Tract Map No. MA2005-3.

Ms. Pereira also recommended the deletion of condition no. 69 (vibration) and the following modifications to condition nos. 56 and 63:

56. *UTILITIES: Prior to building occupancy permit issuance, the developer shall underground all existing wires on the utility poles number 2 to 5, and remove poles number 3, 4 and 5, as shown on the Engineering Services Exhibit "S", dated 6/22/2004. All proposed utilities within the proposed development shall also be undergrounded. Within 60 days of City Council approval of this project, the developer shall make an application with PG&E for its service connections to this site. The applicant is also required to design, construct and coordinate its dry utilities (phone, electric, gas, cable, etc.) construction with Library project and other affected agencies including but not limited to PG&E. If mutually agreed, the City may underground the overhead wires between poles 2 and 5 and the developer is required to reimburse the City for the actual cost of this undergrounding. The undergrounding of overhead utilities is not covered by the fees described in Condition No. 52. (E)*

63. *UTILITIES: In accordance with Chapter 5, Title VIII (Ord. No. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall.*

a) Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord. No. 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check submittal. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection. (E)

Commissioner Garcia asked what type of retail will be going into the building. Ms. Pereira noted that staff has a condition stating that regardless of the retail use, it cannot be a tallow generating use because of the way the trash is situated on site. The types that are intended on being there are more community-oriented like a café that has pre-packaged food or a cleaners or small office. She also noted that there will only be three tenant spaces.

Commissioner Garcia noted that the addition of the fourth floor increases the height of what it was before and the apartments facing the courtyard are pretty dark. Ms. Pereira explained that the original approval removed the three units on the south elevation and that brought it down to a three-story level. This also allowed light into the courtyard and into the units that have their windows face the interior courtyard. Staff has worked with the applicant to allow the fourth floor but mitigating the shade in the courtyard and the units by adding light tunnels and skylights in the two units that are closest to the south elevation as well as create a flat roof on that elevation rather than a peak. Both of these approaches have decreased the amount of shading and darkness that those units in the courtyard will experience.

Commissioner Garcia noted some of the units may not get any sunlight all day long during the winter. Ms. Pereira clarified that there are approximately three or four units that have their windows that face the courtyard and all of those units are getting other forms of natural light. All the other units that may get shade have windows on the opposite side either facing the street or the railroad that allow natural light in constantly.

Commissioner Garcia pointed out that there is no parking on Weller Lane because of the library. Ms. Pereira clarified that the east side of Weller Lane has been vacated and will no longer be a public roadway. It will be a driveway to access the library garage only and the west side of Weller Lanes across Main Street will allow parking.

Commissioner Garcia felt that a reduction of 28 slots is pretty substantial especially for guest parking. He also asked staff what is the timing of the project.

Ms. Heyden replied that she doesn't know for certain, however, in discussing this with the applicant, it appears that the Apton project will be first initiated, but the library project is not that far behind. She noted that the performance schedule in the regulatory agreements shows a lot of coordination with construction schedules and could cause partial closing of Main street and staging areas. She noted that the project is good for approval for 18 months and there is uncertainty of who will go first.

Commissioner Garcia said that if he was a resident living in the area, he would be concerned about construction noise.

Commissioner Lalwani asked staff if the minor changes were brought forward by the applicant or the City. Ms. Pereira explained that the changes were proposed by the applicant and the changes don't change the overall design of the building. She explained that the additional tower on the northwest corner enhances the building and helps anchor the northwest corner of the building. The building still provides 3,000 square feet of retail that anchors the corner immediately adjacent to the library so the site and architectural changes benefit the building and the overall development and the reduction in units and the other minor modifications don't change much.

Commissioner Lalwani asked if the applicant is okay with all of the conditions and Ms. Pereira said yes.

Commissioner Mandal asked why the vibration study condition was deleted and how does staff plan on mitigating vibration issues caused by passing trains. Ms. Pereira explained that the project is not located within the 50 feet that the state Cal Trans standard has identified as being the range where vibrations from a passing train going at its highest speed can be felt or damage the building. Staff felt that even if the vibration study were revised, it wouldn't reveal any new information.

Commissioner Williams was concerned about all the activities that will be taking place at the same time. He asked staff if there will be a program in place to notify residents of possible traffic and construction concerns.

Ms. Heyden explained that she is part of an internal midtown project team that meets weekly and the group has been projecting the kinds of things that need to be done over the next few years in relation to the library project, mixed use project, county health clinic, senior housing project, and two parking garages. Staff hasn't concluded whether Main street will be closed, but is projecting what needs to be done. She is not sure of the exact form of notification, but is certain there will be plenty of notices well in advance because it will be a significant impact.

Chair Williams invited the applicant to speak.

Kurt Anderson, Architect, representing the Applicant at 12201 Saratoga-Sunnyvale Rd. in Saratoga, commented on condition no. 53 that reads below. He noted that he would like to go on record that the applicant is working with engineering staff in regards to working on the storm line and getting technical things worked out that might be minor modifications moving forward. Other than that, the applicant agrees with all the conditions of approval.

53. PUBLIC IMPROVEMENTS. *Prior to any building permit issuance, the developer shall obtain design approval and provide a bond for all necessary public improvements along N. Main Street and Railroad Court, including but not limited to curb and gutter, pavement, sidewalk, undergrounding of existing overhead utilities, street tree planting, signage and striping, bus stops, street lights, fire hydrants, storm drain, sewer and water services, and street furniture improvements such as benches, pedestrian lighting, bike shelter/rack, tree well grates, and garbage receptacles along N. Main Street, and Railroad Avenue, as further shown on Engineering Services Exhibit "S", dated 6/22/2004. The developer shall also design and construct all improvements north of the curb and gutter along Weller, including the Weller Lane north curb and Gutter. The applicant shall construct subject improvements prior to building occupancy permit issuance. These required improvements shall comply with the City's Development standards and Design guidelines and Streetscape plans approved for Milpitas Midtown Specific Plan. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. To aid in project coordination, all maps, improvement plans, and other construction documents shall use Vertical Control that is based on NGVD 29 and Horizontal Control based on NAD83, and utilize the same Basis of Bearing of the maps and documents prepared for the City's library project. The developer shall also execute a public improvement agreement, the performance of which shall be secured in an amount equal to 100% of the City Engineer's estimate of the construction cost for faithful performance and 100% of the City Engineer's estimate of the construction cost for labor & materials.*
(E)

Chair Williams opened the public hearing.

There were no speakers from the audience.

Close the public hearing

Motion to close the public hearing.

M/S: Lalwani/Mohsin

AYES: 7

NOES: 0

Motion to approve "S" Zone Approval Amendment No. SA2005-33, Use Permit Amendment No. UA2005-10 and Major Tentative Tract Map NO. MA2005-3 with all the special conditions and recommendations in the staff report as well as modifications to conditions Nos. 56 and 63.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Staci Pereira

Public Hearing: Yes: X No: _____

Notices Mailed On: 7-1-05

Published On: 6-30-05

Posted On: 7-1-05

TITLE:

"S" ZONE APPROVAL AMENDMENT NO. SA2005-33, USE PERMIT AMENDMENT NO. UA2005-10 AND MAJOR TENTATIVE TRACT MAP NO. MA2005-3

Proposal:

A request to amend a previously approved mixed use development to reduce the number of residential condominium units from 96 to 93, modify the Density Bonus approval to exceed the maximum density by 4 units, site and architectural modifications and to not provide 28 required parking spaces.

Location:

230 North Main Street (APN 028-24-017 and -018)

RECOMMENDATION:

Recommend to the City Council approval of the amended Density Bonus, "S" Zone Approval Amendment No. SA2005-33, Use Permit Amendment No. UA2005-10 and Major Tentative Tract Map No. MA2005-3.

Applicant:

Badru Valani, Apton Properties, LLC, 46509 Mission Blvd., Fremont, CA 94539

Architect:

Kurt Anderson, Anderson Architects, 12201 Saratoga-Sunnyvale Road, Suite D, Saratoga, CA 95070

Property Owner:

Badru Valani, Apton Properties, LLC, 46509 Mission Blvd., Fremont, CA 94539

Previous Action(s):

SZ2002-6, UP2002-35, SA2004-7, UA2004-2 and MA2004-4

Environmental Info:

Negative Declaration (EIA No. EA2003-1) adopted May 16, 2003

General Plan Designation:

Mixed Use

Present Zoning:

Mixed Use with Transit-Oriented-Development Overlay District ("MXD-TOD")

Existing Land Use:

Vacant buildings

Agenda Sent to:

Applicant/property owner & architect (both noted above)

Attachments:

Project plans, traffic study excerpts dated March 18, 2004, vibration study excerpts dated April 28, 2004, draft MOU and OPA, color & material sheet

PJ No.

3144

BACKGROUND

On April 14, 2003, the Planning Commission reviewed "S" Zone (SZ2002-4) and Use Permit (UP2002-35) applications for a 5-story, mixed use development consisting of 102 residential units and 6,000 square foot of retail that exceeded the height and setback regulations for the MXD-TOD district. The project included a density bonus to exceed the maximum allowed density by 13 units and the partial vacation of portions of Weller Lane, North Main Street and Railroad Court. This project was approved with conditions by the City Council on July 1, 2003.

Subsequent amendments (SA2004-7 and UA2004-2) to the original approval were reviewed and approved by the Planning Commission on May 26, 2004 and the City Council on September 7, 2004. These modifications included a reduction in residential units from 102 to 96 and retail floor area from 6,000 to 3,000 square feet, modification of the Density Bonus approval and a parking reduction of 27 spaces. A Major Tentative Tract Map (MA2004-4) to create 1 commercial and 96 residential condominium units was reviewed and approved by the Planning Commission on December 8, 2004 and City Council on December 21, 2004.

The applicant has since made further modifications to the project, which require Planning Commission and City Council review.

Site Description

The subject site is located at the northeast corner of North Main Street and Weller Lane. It is bound by the Union Pacific Railroad tracks to the east, North Main Street to the west, Weller Lane to the south and Railroad Court to the north. West Calaveras Boulevard. (Highway 237) lies further south of the site and the I-880 Freeway is to the west.

The project site is zoned MXD-TOD (Mixed Use with a Transit-Oriented Development Overlay District). Adjacent land uses include railroad tracks to the immediate east, heavy industrial uses further east, single-family and multi-family residential uses (Images and Reflections development) to the north and west, public and quasi-public uses (future Milpitas library, Senior Housing and County Medical Clinic and an existing church) to the south and west, and general commercial further south. The location of the northern BART station chosen by the City Council on April 16, 2002 lies to the immediate east of the subject site on the Union Pacific Railroad. However, the future development of this second station remains uncertain.

A vacant two-story, 6,000 square foot office building, 1,350 square foot garage, surface parking area, five palm trees and shrubs that border the property fence exist on the parcels.

View looking northeast at subject site from southwest corner of N. Main Street and Weller Lane.



THE APPLICATION

The application is submitted pursuant to Milpitas Municipal Code Chapter 11, Section 42.10 (Applications for Modification or Amendment in "S" Combining District), Section 57.00 (Conditional Use Permit), and Section 54.20 (Density Bonus) and Chapter 1 (Subdivisions), Section 4.00 (Tentative Maps).

Project Description

The applicant is requesting an "S" Zone Approval Amendment (SA2005-33), Use Permit Amendment (UA2005-10) and a Major Tentative Tract Map (MA2005-3) for modifications to a previously approved mixed use residential and retail development. The more significant site and design modifications are summarized as:

- ❑ Reduction of residential condominium units from 96 to 93;
- ❑ Reduction of Density Bonus request to exceed the maximum density from 7 to 4 units;
- ❑ Change in unit types and sizes to include more 2-bedroom, larger 3-bedroom, add 4-bedroom and 2-story units;
- ❑ Addition of a 5th tower element at the northwest corner of site;
- ❑ Addition of 4th residential floor along the south elevation; and
- ❑ Increased height of residential lobby and retail towers

Other more minor architectural and site modifications are also proposed and are discussed in detail in the "S" Zone section of the report. As amended, the project would consist of a 4-story mixed-use building with 3,000 sq. ft. of retail space and 93 residential condominium units of the following unit mix:

- ❑ (25) 1-bedroom units: 653 to 776 square foot each
- ❑ (52) 2-bedroom units: 931 to 1,356 square foot each
- ❑ (15) 3-bedroom units: 1,207 to 1,453 square foot each
- ❑ (1) 4-bedroom units: 2,445 square feet

Site Layout. In general, the overall site layout remains the same with 3 stories of residential atop an at-grade podium garage with a 3,000 square feet retail space in the southwest corner. The retail space could accommodate approximately 3 individual tenants with the intent to serve the on-site residences, the surrounding neighborhood and future library patrons. The 4-story triangular-shaped building is proposed in the center of the property with towers that connect the residential and retail tenants spaces creating an internal courtyard on the 2nd floor atop the podium garage. The project revisions include a fifth tower that has been added to the northwest corner.

Vehicular access to the parking garage remains north of the residential lobby on North Main Street and the garage exit at the northern end of the project off of Railroad Court. The ingress and egress of the garage would be by way of one inbound and one outbound lane, each proposed at approximately 15 feet in width. Security gates with a card reader would be located within the garage for both driveways to provide 173 secure parking spaces for the residents only. The interior garage layout has been modified to accommodate the additional spaces needed as a result of the change in unit type which requires more parking. Ten (10) parking spaces for retail patrons would still be provided along property's North Main Street frontage.

The other site features, which have been slightly modified, include a 17,583 sq. ft. interior open-air courtyard atop the podium garage with raised planters and seating areas, in-ground landscape planters along the buildings setbacks, a community room (2nd Floor), fitness room (3rd floor) and meeting room (4th floor) and a trash enclosure at the northeast side of the site and building. The trash operations would remain the same and consist of trash chutes on each floor to two collection areas in the garage, which would then be transferred to compactors for pick-up. A third trash area would handle the commercial waste and be located near the rear exit doors of the commercial space in the garage. Recycling would be collected on each floor and then transferred to the compactor.

Building Architecture. The overall architectural design of the mixed-use development remains the same with slight changes on each elevation and an increase in building and tower height. The design consists of the two tallest projecting towers on the southwest and northwest corners with a proposed height of 62'-6" and the residential lobby tower at 60'-6", with shorter towers at the corners and projecting building elements along the façade. The bottom story (podium level) contains the retail spaces, garage entrance and exit (north and west elevations) and metal louvers for ventilation of the garage. Stories above the podium contain windows and balconies for the residential units.

Proposed building materials remain the same, with the exception of roof material, and the color scheme has changed. Materials include stone veneer (on retail facades and podium projections), stucco, metal canopies and roof shelves, and asphalt composition tiles. Adornments include decorative metal bracing that supports solid metal shelves at the top of the towers below the flat roofs, as well as on the building's vertical projections. Metal awning with cable tiebacks are located on some residential windows and above the retail façade.

Land Swap. The project was designed under the assumption that a land swap between the property owner and the City would occur, which involved the abandonment of portions of Weller Lane, North Main Street and Railroad Court in exchange for City acquisition of the southeast corner of the existing parcel and portions of North Main Street. Since the previous amendment in September of 2004 the land swap has occurred and the resulting parcel is approximately 1.83 net acres (2.23 gross acres which includes area of adjacent streets to centerline as per the General Plan definition of gross acres and density).

Use Permit. The original Use Permit approval allowed exceedance of building height, setback and number of stories. The subsequent amendment removed those allowances and added the allowance of not providing 27 parking spaces required by the zoning ordinance for guest and retail parking and to exceed the minimum and maximum building setback along the north property line due to the realignment of Railroad Court. The current amendment requests an increase of the parking reduction to 28 spaces and a reduction in drive aisle width from 25 feet to 24 feet. The minimum and maximum setbacks along the north side are still needed.

Density Bonus. The applicant is seeking an amended density bonus approval to exceed the maximum density (40 units per acre) allowed under the multifamily very high-density land use designation by 4 units. The amendment would result in a density of 42 units per acre whereas the original approval would have resulted in a density of 46 units per acre and 43 units per acre for the subsequent amendment. The applicant intends to meet the State and City Density Bonus regulations by making 20% of the units affordable to lower income households. The minimum percentage required by Density Bonus law is 20% of the total units allowed by the zoning district. Units above this amount can all be market rate.

ISSUES

The following sections only addresses the proposed modifications to the project since the previous approval and any issues associated with them. Since this project has not yet been constructed any new or modified conditions that result from the project amendments have been incorporated into the previously approved conditions and included in the final recommended Special Conditions at the end of this report.

“S” ZONE APPROVAL AMENDMENT

As per Section 42.02, the City’s zoning code requires “S” Zone Approval Amendments to be consistent with the zoning ordinance, consistent with the General Plan and that the layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development, which are discussed below.

Building Architecture

The modifications proposed to the building’s exterior include the following:

- Addition of 5th tower at northwest corner;
- Reduction in overall building height by 2’-6”;
- Increase in height of two towers by 2’-6”;
- Addition of 4th residential floor along southern elevation;
- Increase in use of stone veneer along building’s base;
- Change in color scheme
- Removal of garage vents on south elevation and increase in size garage vents elsewhere to conform to ventilation requirements of the Building Code;
- Change of openwork handrails to solid walls along east elevations on an alternating basis;
- Roof material changed from slate tiles to asphalt composition;
- Increased articulation of the both residential lobby and retail towers; and
- Re-sizing of windows along east elevation.

The majority of these modifications are minor in nature and staff finds they are compatible with the overall design of the building and not in conflict with the development standards of the MXD-TOD zoning district, with the exception of the increase in tower height, addition of the 4th-story on the south elevation, roof material change and change in color scheme.

Tower Height. The height of the southwest retail tower is proposed to increase by 2’-6” from the previous approval and the new northwest tower is proposed at the same 62’-6” height. The applicant has modified the unit types to include more 2-bedrooms, larger 3-bedrooms and has added a 4-bedroom and 2-story units. The 2-story units are proposed in both the northwest and southwest towers which requires a higher ceiling. The reduced overall building height and other towers remain in conformance with the 60-foot maximum building height in MXD-TOD. Staff has discussed this deviation with the applicant and both have concluded that the height of the two towers can be reduced to 60-feet without impacting the 2-story units, thus bringing the building into

conformance. Therefore, **staff recommends** a condition of approval to revise the elevations and reduce the tower height to 60 feet.

4th Story Addition. The change in unit type also results in the addition of a 4th story along the south elevation with 3 units. In previous submittals, staff has worked with the applicant to remove the 4th story on the south side in order to allow more light into the podium courtyard and into units where their only windows face the courtyard. The applicant has proposed several remedies to address staff's lighting concerns. The roof along these 3 residential units on the south side has been changed from sloped to flat which lowers the overall height to allow in more light. In addition, the flat roof is stepped down in the interior courtyard elevation to allow in light during the winter when the sun has a lower angle. To allow more light into the units on the west side closest to the south elevation, the applicant proposed skylights for the units on the 3rd floor and sky tunnels for units on the 2nd and 3rd floors. Staff concludes that these light wells from the roof will allow adequate natural light in to these units and **staff recommends** conditions of approval to show the locations on the roof plan and provide product details.

Roof Material. The applicant also proposes to change the previously approved slate tiles to asphalt composition shingles. Staff finds the previously approved slate tiles provide more depth and are of higher quality, which is consistent with the Midtown Design Guidelines, and better compliment the building's design. Therefore, **staff recommends** a condition of approval that the roof material be modified to the slate tile or other high quality roof material that complements the building.

Color Scheme. The color scheme of the building has also changed to three colors which include a mauve, off-white, cream, and peach. The applicant has provided a color rendering of the west elevation only and a computer printout of the colors. Additional information is necessary for staff to make a determination on the colors and the scheme on each elevation proposed. Therefore, **Staff recommends** a condition of approval to submit samples of the colors proposed and colored renderings of the other elevations.

Landscape & Streetscape

The revisions to the landscape plan incorporated the previous conditions of approval and includes some minor modifications in the courtyard area. The courtyard still consists of raised planters with trees, but introduces a fountain, wood trellis and pergola. Small turf areas are also proposed. Previous discussions with the applicant included the use of synthetic grass for these areas. Staff has concluded that synthetic grass would not be appropriate in this courtyard unless it was used for a putting area for golf, and therefore **staff recommends** that either real turf be used or removed altogether. Additionally, due to the shaded areas in the courtyard previously discussed in the architecture section of this report, **staff recommends** the landscape plan be revised to incorporate more shade accommodating trees in both the northern and southern areas of the courtyard.

Parking

The total parking required has increased to 211 parking spaces (summarized in the table below). This is a result of the change from 1 to 2-bedroom units, which have a higher parking requirement. The project proposes a total of 183, 10 of which are on-street spaces. The parking garage has been revised and contains a total of 173 parking spaces, 19 of which are tandem stalls and 66 are compact. This is consistent with the Zoning Ordinance, which permits the use of tandem spaces for residential units that require 2 or more parking spaces and compact spaces for up to 40% of the

residential parking requirement. Staff has a concern with the one parking space at the southeast corner of the garage immediately north of the utility storage room and adjacent to the trash collection area and service elevator and stairs. The area between this parking space and the trash area is too narrow (only 4-feet wide) for the trash bins and would be a challenge to get large items to the stairwell or service elevator. Therefore, **staff recommends** this parking space be relocated elsewhere in the garage.

Parking Standard	Required	Proposed	Complies?
Residential: <input type="checkbox"/> 1 bd. = 1.5 covered stalls <input type="checkbox"/> 2 bd. = 2.0 covered stalls <input type="checkbox"/> 3 bd. = 2.0 covered stalls <input type="checkbox"/> 4 bd. = 2.0 covered stalls	<input type="checkbox"/> (25) 1 bd. = 37 <input type="checkbox"/> (52) 2 bd. = 104 <input type="checkbox"/> (15) 3 bd. = 30 <input type="checkbox"/> (1) 4 bd. = <u>2</u> 173	173	Yes
Guest Parking – 15% residential	26	0	No, see page 9
Retail – 1 / 250 SF	12	10	No, see page 9
TOTAL	211	183	No, see page 9

The majority of the retail parking, 10 of the 12 required (see Use Permit section), is still proposed on North Main Street along the building's street frontage, which is permitted in the Midtown area. In addition to the 2 retail spaces not provided, the applicant is requesting approval not to provide the 26 parking spaces that are required for guests, one more than approved in the previous amendment (see Use Permit section). The requirement for bicycles - 5% of total residential plus guest spaces – remains unchanged at 10 spaces. Bicycle racks are currently shown on the sidewalk near the residential lobby and retail area. **Staff recommends** incorporating some of the 10 required bicycle spaces into the parking garage for the residents.

Open Space

The Midtown Plan requires 3 ½ acres open space per 1,000 persons. Based on the reduction of units from 96 to 93 the development would be required to provide the following:

.50 public acres
.38 private acres
.88 acres total park acres

The public acres would be satisfied with the payment of a park-in-lieu fee. Due to the close proximity to Wrigley Creek, which is proposed for trail development, the project is able to contribute to the improvements of the future park trail. As of January 2005, the City estimates it costs approximately \$600,000 to improve one acre of trail. Based on this figure the project's public park in-lieu fee is calculated to be \$297,357 based on the revised unit count. Up to 43% of the open space requirement may be provided as private recreational space, which would be met by the previously approved on-site amenities including the interior courtyard (17,583 sq. ft.), fitness room (727 sq. ft.), community room (1,260 sq. ft.), and the newly proposed meeting room (727sq. ft.), which total 20,567 sq. ft.

Traffic and Impacts

A traffic study was conducted (Hexagon, March 18, 2004) that addressed the previously approved 96 units, relocation of the garage entrance and circulation. A revised study was not required since the further reduction of units would not increase the traffic impacts. The aforementioned study concluded the project would continue to degrade the level of service at the unsignalized intersection of Main and Carlo to an unacceptable LOS E (Level of Service). Mitigation for this impact is the payment of a Traffic Impact Fee, which has been modified to reflect the reduction in trips that would result from the decrease in units.

The garage plan has been revised to accommodate additional parking spaces a result of the change in unit type. While all of the required parking spaces have been included the drive aisle width has been reduced from 25 to 24-feet (See Use Permit Section). To improve the safety and circulation of the revised garage plan *staff recommends* the following as conditions of approval:

- ❑ Clearly marking the directionality of each driveway with appropriate signage and striping;
- ❑ Stripe the 15-foot long area south of the garage entrance on North Main Street as “No Parking” to allow an adequate right turn radius off of northbound N. Main Street into the garage; and
- ❑ Deepen the throat of the garage entrance and show the security gate and card reader placement on the plans in a location that allows queuing for 2 vehicles off of the street, approximately 40 feet.

Noise and Vibration Impacts

An acoustical study was prepared as part of the original application that analyzed the external and internal noise levels for the proposed project. However, since the railroad line is located 43 feet from the building and is currently not in use the consultant referenced a CalTrans Vibration standard and determined that the maximum vibration level would be above the threshold of perception, however well below the architectural damage risk level and below the vibration limit for historical building. The report concludes that only a very light vibration may be perceived within the building and would be insignificant. However, since this assessment was based on the CalTrans standard, *staff recommends* a site-specific analysis be performed prior to final design or construction plans. If at the time there is still no train running on the track closest to the project a sample will need to be taken from the other track that runs immediately east and adjacent to the subject track which the City is positive is operating.

Conformance with the General Plan

The proposed project, as conditioned, does not conflict with any General Policies, and is consistent with Land Use Implementing Policies 2.a-I-2 (Growth and Expansion) and 2.a-I-12 (Residential Development), which promote in-fill development rather than providing costly expansion outside the urban service area and encourages new residential developments that provide a variety of and mix in housing types and costs. The project is in compliance with these policies in that it is proposing a range of residential units in terms of size and cost and would be located within the already built environment.

Conformance with the Zoning Ordinance

The proposed project, as conditioned, continues to be consistent with the Mixed Use “MXD” and Transit-Oriented-Development “TOD” overlay district of the Milpitas Zoning Ordinance. The “MXD” zoning district encourages a compatible mix of residential and retail uses within the framework of a pedestrian-oriented streetscape. The “TOD” overlay district allows for increased densities and intensities around and near transit stations in order to provide goods and services within a convenient walking distance. In addition, it encourages attractive residential and commercial environments that provide for a desirable transition to the surrounding conventional area. In addition, the minor building and site modifications are compatible and aesthetically harmonious with the overall approved project and the surrounding existing and future development of the new Milpitas library, Senior Housing Development and the County Medical Clinic.

Conformance with the Midtown Specific Plan

In addition to the “S” Zone Amendment Review in Section 42.10 of the Zoning Ordinance and conformance with the General Plan, projects within the Midtown area need to demonstrate compliance with the Specific Plan, which is part of the General Plan – including Midtown Development Standards and Design Guidelines. As demonstrated in the “S” Zone section of this report, the proposed amendments, as conditioned, comply with the development standards, with the exception setbacks, parking and drive aisle width discussed in the Use Permit section that follows. In addition, staff has reviewed the policies and design guidelines of the Midtown Specific Plan and has determined that the project, as amended and conditioned, remains consistent with the intent, requirements and policies of the Specific Plan.

USE PERMIT AMENDMENT

Pursuant to Section 43.09 (Exception to Standards) of the “MXD-TOD” district, exceptions to certain development standards may be approved by the Planning Commission through the approval of a Use Permit in accordance with Section 57 (Use Permits) of the Zoning Ordinance. The applicant is seeking a Use Permit amendment to exceed the minimum and maximum building setbacks, a reduction in drive aisle width and for a parking reduction of 28 parking spaces, one more space than previously approved.

Setbacks. The proposed building would exceed the minimum 8-foot and the maximum 15-foot building setback for the “MXD-TOD” district along the Railroad Court frontage (proposes 6-30 foot building setback from back of sidewalk). A unique northern property line resulted from the land swap and realignment of the Railroad Court and N. Main Street intersection. Rather than shape the building to conform to the new curved north property line and create odd-shaped, unusable space to meet the setback requirement, staff supports the setback deviation.

Drive Aisle Width. The odd-shape of the parcel also creates a challenge for the garage layout design. In order to provide a 4-foot sidewalk from the handicap spaces to the residential lobby elevator, each drive aisle was reduced 1-foot. The resulting 24-foot wide aisle, which is 1-foot short of the standard 24-feet, is the standard in other local cities. Staff concludes this deviation would not impair the safe and convenient accessibility of the parking spaces.

Parking. The applicant is also seeking a parking reduction to not provide 28 parking spaces (2 for the retail and 26 for guests), which is 1 more than previously approved, due to the change in unit type. The parking garage would accommodate all of the required parking for the residential units,

however not the guest and the 2 additional retail spaces required by the zoning ordinance. There will be adequate parking within the vicinity to accommodate the guests and retail customers based on the following:

- On-street parking is permitted on both sides of Weller Lane (west of N. Main St.), and on the east side of N. Main Street and Marilyn Drive. In addition, the staging area where buses line up near the bus shelters will no longer be needed for bus queuing since the transfer station was relocated to the Great Mall in 2004. Staff will work with the VTA to convert these areas and make available for parking.
- The City will be constructing a new 3-story parking garage with approximately 350 spaces immediately south of the Apton project. This garage is providing parking for the library but could also serve as overflow parking for adjacent uses in the vicinity and for public events. In addition, the 3,000 sq. ft. retail use proposed in the southeast corner of the project is intended to serve both pedestrians from the library and residents of the development, which could create less demand for the on-street parking spaces.

Staff concludes that there will be sufficient available on-street parking for the project when completed and a considerable amount that would be available in the future once the library garage is constructed.

Consistent with the "S" Zone findings, as conditioned, the parking reduction, exceedance of setbacks and reduction in drive aisle width are not anticipated to have any adverse impacts on parking, traffic, noise, odors, or be detrimental to the health and safety of the public. Therefore, as conditioned, the proposed exceptions to the "MXD-TOD" development standards will not negatively impact the surrounding community. In addition to the required finding under Section 57, the following two additional findings for Midtown exceptions are required:

1. The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development; and
2. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

With regard to the exceedance of building setbacks, staff concludes that setback deviation would provide for a more uniform shaped building rather than have the building conform to the new curved north property line and create odd-shaped, unusable space. In addition the increased setback areas allow for more and denser landscaping opportunities and an improved streetscape on Railroad Court. The use permit amendment for the parking reduction and reduction in drive aisle width allows for the utilization of smart growth trends while providing an increased density and more affordable units.

DENSITY BONUS

California Government Code Section 65915 and Section 54.20 (Density Bonus) of the Zoning Ordinance) requires the City to provide incentives or concessions when an applicant agrees to one of the following ways to provide affordable housing. In all cases, the percentage of units does not include the additional units allowed through a density bonus.

1. Reserving 10% of the units for very-low income households (50% of County median

income).

2. Reserving 20% of the units for low-income households (80% of County median income).
3. Reserving 20% of the units within a condominium project for moderate-income households (120% of County median income).
4. Reserving 50% of the units for senior housing.

The 2004 median income for Santa Clara County is \$105,500 for a family of four. The incentives or concessions the City can grant include:

- A) An increase in density of at least 25% or less if elected by the applicant and one of the following:
 - A reduction in site development standards.
 - Approval of mixed use zoning in conjunction with the housing project.
 - Anything else that results in an actual cost reduction for the project.
- B) Other incentives of equivalent financial value based upon the land cost of the dwelling unit.

The applicant has agreed to reserve affordable units as shown below to meet the density bonus requirements and Midtown Specific Plan Policies 3.5 and 3.6.

Income Level	No. of Units	Unit Type
Very Low	9	7-one bedroom & 2-two bedroom units
Low	10	5-one bedroom & 5-two bedroom units
Total	19	

The nine units reserved for very-low income households (10% of the 89 units allowed under the multi-family high land use designation) qualify the project for a density bonus. Therefore, the project as amended, proposes 93 units, 4 units more than allowed under the existing land use designation and the applicant requests the following deviation from the MXD-TOD Development Standards as a concession:

1. Varying of building setback on Railroad Court from a minimum of 6 feet and a maximum of 30 feet.
2. Reduction in drive aisle width to 24-feet.

Environmental Review

A Negative Declaration (EIA No. EA2003-1), a statement briefly describing the reasons that the proposed project will not have a significant effect on the environment, was completed for this project and adopted by the City Council on July 1, 2003. A statement of conformance was attached to the Negative Declaration that indicates the project is in conformance with the previously approved Milpitas Midtown Program EIR. The Program EIR provided mitigation measures for Air Quality, Biological Resources, Hazardous Materials, Cultural Resources, Traffic, and Utility impacts. Of these mitigation measures, only the traffic mitigation from the Midtown EIR will be applicable to this project and will be included as a condition of approval. The amendments to the

project will not result in any environmental impact not already considered in the adopted Negative Declaration.

Neighborhood Outreach Meeting

On March 17, 2003, the developer and architect presented their original project proposal to the public. Residents and occupants within 300 feet of the subject site were invited and several of the residents attended the meeting, in addition to City staff. There were no concerns with the project expressed by the public in attendance. Staff concludes that the public hearing for the amendments would serve as an adequate venue for questions by the neighboring residents or concerned citizens regarding the project's modifications. To-date staff has not received any comments.

RECOMMENDATION

Close the Public Hearing. Recommend to the City Council approval of the Density Bonus, "S" Zone Approval Amendment No. SA2005-33, Use Permit Amendment No. UA2005-10 and Major Tentative Tract Parcel Map No. MA2005-3 based on the Findings and Special Condition of Approval listed below.

FINDINGS

1. The amendments to the approved project will not create any environmental impacts not already considered in the Negative Declaration (EIA No. EA2003-1) adopted by the City Council on July 1, 2003.
2. The proposed project, as conditioned, is consistent with the General Plan and in compliance with policies 2.1-I-2 (Growth and expansion) and 2.a-I-12 (Residential Development) in that it is proposing a range of residential rental units in terms of size and cost and would be located within the already built environment.
3. The proposed project, as conditioned, continues to be consistent with the Mixed Use "MXD" and Transit-Oriented-Development "TOD" overlay district of the Milpitas Zoning Ordinance. In addition, the minor building and site modifications are compatible and aesthetically harmonious with the overall approved project and the surrounding development, both existing and future.
4. The proposed Use Permit for the exceedance of the setbacks, drive aisle width and a parking reduction for 28 spaces are not anticipated to have any adverse impacts on parking, traffic, noise, odors, or be detrimental to the health and safety of the public and therefore, will not negatively impact the surrounding community.
5. The proposed Use Permit for exceedance of setbacks, drive aisle width and a parking reduction for 28 spaces provide public benefits of a more uniform building and greater landscape and street opportunities and utilization of smart growth trends while providing an increased density and more affordable units.

SPECIAL CONDITIONS

1. APPROVAL. This "S" Zone Approval Amendment No. SA2005-33 is for the final design of a 4-story, mixed use residential and retail development consisting of 93 residential units and approximately 3,000 square feet of retail lease space in accordance with the plans approved on

July 13, 2005, and as amended by the conditions below. Any major modification to the project as proposed will require an "S" Zone Approval Amendment by the Planning Commission. Minor modifications can be submitted to the Planning Division for processing as per Section 42.10 of the zoning code. (P)

2. **APPROVAL.** This Use Permit Amendment No. UA2005-10 is for exceedance of building setbacks along the portion of the north property to range from 6 to 30 feet, reduction in drive aisle width to 24 feet and for a parking reduction of 28 spaces (2 retail and 26 guest). Any modification to these development standard deviations will require a Use Permit Amendment by the Planning Commission. (P)
3. **APPROVAL.** This Major Tentative Parcel Tract Map No. MA2005-3 is to create 1 commercial and 93 residential condominiums within the proposed building located on parcel 86-29-069, as depicted on the approved Tentative Tract Map dated July 13, 2005, and as amended by the conditions of approval. (P)
4. **ENVIRONMENTAL ASSESSMENT.** Prior to building permit issuance, the applicant shall submit a Phase II Environmental Assessment to the Planning Division and abide by any appropriate regulatory agency requirements. No building permit of any type shall be issued until a "Case Closure" or completion of site remediation letter from the appropriate regulatory agency is submitted to the Planning Division. (P)
5. **RETAIL.** No tallow generating businesses shall be permitted to occupy the retail tenant spaces. (P)
6. **PARK FEES.** Prior to certificate of occupancy issuance, the applicant shall pay a park-in-lieu fee in the amount of \$297,357. (P)
7. **TRAFFIC IMPACT FEE.** Prior to building permit issuance, the applicant shall contribute a "fair share" traffic impact fee in the amount of \$17,844 (based on a Midtown impact fee of \$113 per peak hour trip and a Montague Expressway impact fee of \$903 per peak hour trip). (P, T)
8. **PJ ACCOUNT.** If at the time of application for building permit, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
9. **PJ ACCOUNT.** If at the time of application for certificate of occupancy there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
10. **DENSITY BONUS.** The City shall implement Section 54.20-3 (A-2) (Density Bonus) with respect to affordable housing incentives which shall include a bonus of 4 dwelling units above the 89 units allowed in "MXD-TOD" district and concessions involving a setback deviation of the building along Railroad Court and a reduction in drive aisle width. The total number of 93 "for-sale" condominium units shall be provided in the residential development. (P)
11. **AFFORDABILITY.** Prior to the issuance of any permit, the applicant shall provide documentation to the approval of the City Attorney that the following 19 affordable housing units (at least 20% of allowed units without a density bonus) will be available at a housing cost affordable to very low and moderate-income households:

Income Level	No. of Units	Unit Type
Very Low	9	7-one bedroom units 2-two bedroom units
Moderate	10	5-one bedroom units 5-two bedroom units
TOTAL	19	

12. **AFFORDABILITY.** Prior to building permit issuance, the applicant shall provide to the City of Milpitas Redevelopment Agency, Executive Director for review and approval, a dispersement plan exhibit illustrating the location of the affordable housing units within the development. The affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features and design and amenities as the fair market rate units in the development. (P)
13. **AFFORDABILITY.** The applicant and the City of Milpitas shall enter into Restriction Agreements that outline the provisions for maintaining the long-term affordability of the required affordable “for-sale” condominium units. The Restriction Agreements shall be approved as to form by the Milpitas City Attorney’s Office, executed by the City Manager and recorded with the County of Santa Clara. The Restriction Agreements shall require that the long-term affordability of the “for-sale” condominium units shall remain in effect for fifty-five (55) years of the project. Any change to this requirement is subject to review and approval by the Milpitas City Council. (P)
14. **AFFORDABILITY.** The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project. (P)
15. **AFFORDABILITY.** The established affordable purchase price for the “for-sale” condominium units shall be pursuant to income eligibility provided by the California Health and Safety Code Sections 50079.5, 50093 and 50105 which provide the “very low” limits established by the U.S. Department of Housing and Urban Development (HUD) are the state limits for those income categories and State of California Redevelopment Agency Law. The final purchase price established for the “for-sale” condominium units shall not exceed the maximum allowable purchase price for “very low” households as defined in the above code sections. Said sale price shall be approved for consistency with the definitions by the Housing Division staff. (P)
16. **GENERAL.** The applicant shall comply with Planning Commission Resolution No. 168, a resolution of standard conditions for commercial development. (Items #1-4, 9, 11 (P))
17. **GENERAL.** This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations, and in conformance with the approved plans. (P)
18. **BUILDING ELEVATIONS.** Prior to building permit issuance, the applicant shall revise the elevations in order to address the following:
 - a) East elevation: indicate how far vertical elements project from building; redesign the change roof height created by the odd roofline; center windows on the two towers or add a

second column of windows to balance; plane windows should match multi-paned windows used throughout the project; and incorporate stone veneer to projections.

- b) North elevation: relocate garage vents at northwest corner further west closer to garage entrance and use stone veneer at this corner; enhance the garage exit feature by possibly adding a projection rather than flush, recess or adorn it; show trash enclosure on elevation; windows and balconies shown above and to the right of the garage are unbalanced; clarify what vertical vent-like elements are left of the corner tower balconies and provide details.
 - c) South elevation: windows with balconies are unbalanced; clarify if garage vents are going to remain along this elevation; single-paned windows shown to the right of the commercial units shall match multi-paned windows used throughout the project.
 - d) West elevation: enhance the garage entry feature by possibly adding a projection rather than flush, recess or adorn it.
 - e) All elevations: reduce height of all towers to 60 feet or less; all windows must be recessed (minimum 4-6 inches); along the building's base, use veneer treatment in areas without garage vents and around garage entrance and exit and work with staff with vent placement; modify all elevations to be consistent with the floor plans of levels, especially at the southwest corner near the retail tower (planters are not shown on elevations); use of canopies is inconsistent especially on the south facing windows and on the projecting elements; provide details or typical catalogue examples of all canopies, decorative metal bracing, railings, windows, and doors proposed in order to see how these elements meet the building, their thickness, material, color, etc.; and provide material samples of stone veneer and pavers and details of all light fixtures. (P)
19. FLOOR PLAN. Prior to building permit issuance, the applicant shall submit a revised floor plan of the garage showing the following:
- a. Relocate the parking space in the southeast corner above the utility storage room and closest to the trash area and service elevator and stairs elsewhere in the garage. This space must be relocated and no loss of parking (no less than 173 spaces) may result.
 - b. Clearly marking the directionality of each driveway with appropriate signage and striping.
 - c. Stripe the 15-foot long area south of the garage entrance on North Main Street as "No Parking" to allow an adequate right turn radius off of northbound N. Main Street into the garage.
 - d. Deepen the throat of the garage entrance and show the security gate and card reader placement on the plans in a location that allows queuing for 2 vehicles off of the street, approximately 40 feet.
 - e. Incorporate some of the 10 required bicycle spaces into the parking garage for the residents.
 - f. Clearly mark each parking space for the assigned unit (including the handicap space).
 - g. For retail space 2 provide a rear exit door into the garage for trash enclosure access purposes. All trash must be taken through the garage and not out the front door along the sidewalk. (P)

20. **LIGHTING.** Prior to building permit issuance, the applicant shall submit a lighting plan for the building, site and streetscape pedestrian fixtures and details for light poles and other light fixtures to the Planning Division for review and approval. (P)
21. **ROOFTOP EQUIPMENT.** Prior to building permit issuance the plans shall show the locations of all HVAC units, skylights, sky tunnels and other rooftop equipment and details and include a cross section to ensure all equipment is screened. (P)
22. **SIGNAGE.** Prior to the approval of any signage for the multi-tenant, mixed-use development, a sign program application shall be submitted for Planning Commission approval. (P)
23. **IRRIGATION.** Prior to building permit issuance, the applicant shall submit a revised irrigation plan for all landscape areas (podium courtyard, building perimeter planters and streetscape) and include details of irrigation system for each planter (i.e. show all sprinkler head/bubbler locations). (P)
24. **LANDSCAPE.** Prior to building permit issuance, the applicant shall submit a revised landscape plan that includes the following:
 - a. Reduce the number of canopy trees in the courtyard and replace with equal number, if not more, trees of a species with a smaller canopy.
 - b. Provide more shade accommodating tree species in both the northern and southern courtyard locations since these areas will be in shade most of the year.
 - c. Show the location and indicate the height of the relocated palms.
 - d. Clarify if real (grass) turf is proposed and if not remove turf areas altogether.
 - e. If driveway width can accommodate, add a narrow landscape area along west side of trash enclosure next to garage exit and plant a vine or other climbing species to screen the solid bare wall.
 - f. The numerous shrubs listed on the landscape plans need to be individually indicated in the planters to demonstrate a tiered landscape with taller shrubs in the back that adequately screen the vents and “ground” the building and increasingly shorter shrubs towards the front of the planter.
 - g. Provide additional or better screening shrubs around locations of utilities in planters along building frontages to reduce visual impacts of utilities and garage vents, which have increased in size. (P)
25. **GRAFFITI.** The property owner shall continue to comply with the City’s Neighborhood Preservation Ordinance regarding the public nuisance issue of graffiti on the site. Should graffiti become an issue again in the future, prior to demolition of the abandoned buildings, the property owner shall comply with City’s standards of removal or the City shall take action to obtain a court order to enter the property and abate the graffiti. Legal costs, staff time and all other costs associated with resolving this matter will be passed on to the property owner. Contact Chris Schaller at (408) 586-3078. (P, NP)
26. **EROSION CONTROL.** Implement standard best management practices (BMPs) for the control of erosion during the temporary stockpiling of excavated soils with fiber rolls and installing sand or gravel bags to minimize runoff impacts to halt runoff from entering the storm drainage system. (P)

27. **EROSION CONTROL.** During all construction activities on-site, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD:
- a. Watering all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
 - b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2 feet freeboard level within their truck beds.
 - c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
 - d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.
 - e. Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets.
 - f. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more).
 - g. Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
 - h. Limit traffic speeds on unpaved areas to 15 mph.
 - i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
 - j. Plant vegetation in disturbed areas as quickly as possible.
 - k. Suspend excavation and grading (all earthmoving or other dust-producing activities) or equipment during periods of high winds when watering cannot eliminate visible dust plumes. (P)
28. **STORMWATER.** Prior to any permit issuance, the applicant shall submit a storm water control plan for the entire site including the courtyard that to the extent feasible, designs the project facilities to incorporate design concepts recommended in the Bay Area Stormwater Management Agencies Association's "Start at the Source" Design Guidance Manual for Stormwater Quality Protection (BASMAA 1999), including, but not limited to fossil filters, grading of impervious areas to landscaping and roofs draining to landscaped areas. (P)
29. **PARKING.** Per Building Department Notes to Applicant, provide accessible (handicap) parking for guests and retail onsite if occupancy of Apton Plaza is achieved before the public parking facility is constructed near the library. This may require an interim plan to allow public access to the garage with signage indicating handicap spaces available inside the garage. This also may prevent some units from being occupied in order to free up the accessible parking spaces. (P)
30. **COURTYARD.** Prior to building permit issuance the plans shall include details of benches, tables, fountains and other amenities in the courtyard area. (P)
31. **SOUNDWALL.** Prior to building permit issuance the plans shall include an elevation and details (material and colors) of the soundwall along the eastern property line. (P)

32. **STREETSCAPE.** Prior to building permit issuance, the applicant shall submit a revised streetscape plan that includes all of the streetscape amenities including the following revisions:
 - a. Clarify streetscape trees and trees in planter along building on Weller are Bradford Pear (*Pyrus Calleriana* "New Bradford") not the Aristocrat and all other streetscape trees are European Hackberry (*Celtis Australis*) not Chinese Hackberry; as noted on plans.
 - b. Include pedestrian lights along all street frontages, interspaced with street trees with a spacing to achieve an average of 1-foot candle (approximately between every two trees).
 - c. Final streetscape design and materials along Weller Lane must compliment and match the final design of the Library side. (P)
33. **TRASH ENCLOSURE.** Prior to building permit issuance, the applicant shall submit elevations for the exterior trash enclosure. (P)
34. **TRASH MAINTENANCE.** The trash bins and trash/recycling enclosure areas shall be kept clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)
35. **TREE REMOVAL.** Prior to any protected tree (36-inch circumference or larger) removal, the applicant shall obtain a tree removal permit from the Trees and Landscape section of Public Works Department. (P)
36. **BUILDING COLOR.** Prior to building permit issuance the applicant must submit actual samples of the colors proposed and colored renderings of the other elevations. The final color schemes for the elevations shall be to the approval of the Planning Staff. (P)
37. **ROOF MATERIAL.** Prior to building permit issuance the plans shall indicate a slate or concrete tile or other high quality roof material (not asphalt composition) that complements the building in terms of style and color. (P)
38. **UTILITIES.** The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
39. **LAND SWAP.** Prior to final map recordation, the properties which are subject to the land exchange agreement between the City and developer for the portion of Railroad Court, N. Main Street, Weller Lane, Winsor Street and the Southerly portion of the project site shall be conveyed in fee to each party. Alternatively, the developer shall acquire the necessary land not currently owned by the developer, to make up the proposed subdivision distinctive boundary. (E)
40. **HOMEOWNERS ASSOCIATION.** Prior to final map recordation, the developer shall establish a homeowner association to define responsibilities, regulations and restrictions that apply to both residential and commercial entities. The homeowners association shall be responsible for the maintenance of the landscaping, walls, private streetlights, common area and private streets and shall have assessment power. This information shall be clearly included in the Conditions, Covenants, and Restrictions (CC&R) and recorded documents. The CC&R document shall be submitted for review and approval by the City Engineer. (E)

41. **COMMUNITY FACILITIES DISTRICT.** Prior to final map recordation developer shall submit an executed petition to annex into, with respect to the property, the special taxes levied by a Community Facility District (CFD 2005-1) for the purpose of maintaining the public services. No map will be recorded without receipt of an executed petition for annexation and consent and waiver executed by the property owners for the CFD for the establishment of special taxes. The developer shall comply with all rules, regulations, policies and practices established by the State Law and/or by the City with respect to the CFD including, without limitation, requirements for notice and disclosure to future owners and/or residents. (E)
42. **COMMUNITY FACILITIES DISTRICT.** Prior to issuance of any building permit, all submitted petitions to annex into the CFD shall be finalized. The developer/property owner shall comply with all rules, regulations, policies, and practices established by the City with respect to CFD including, without limitation, requirements for notices and disclosure to future owners or residents. (E)
43. **CONDOMINIUM PLAN.** Prior to condominium plans recordation, the developer shall prepare and submit condominium plans for City review. (E)
44. **TENTATIVE MAP.** Make changes as noted on Engineering Services Exhibit "T" (dated 7/5/2005) and submit a Mylar of the revised tentative map to the Planning Division within three weeks of this tentative map approval. No application for the review of the parcel map or improvement plans will be accepted until this condition is satisfied. (E)
45. **FINAL MAP.** Prior to final map recordation developer shall submit to the City a digital format of the final map (AutoCAD format). To aid in project coordination, all maps, improvement plans, and other construction documents shall use Vertical Control that is based on NGVD 29 and Horizontal Control based on NAD83 (zone 3), and utilize the same Basis of Bearing of the maps and documents prepared for the City's library project. (E)
46. **FINAL MAP.** Prior to issuance of any building permit, the final map shall be recorded. (E)
47. **FINAL MAP.** The developer shall dedicate on the final map necessary public service utility easements, street easements and easements for water and sanitary sewer purposes, as shown on the Engineering Services Exhibit "T", dated 7/5/2005. (E)
48. **DEVELOPMENT FEES.** Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit. (E)
49. **LAND SWAP.** This approval is conditioned upon:
 - a. The developer executing the land exchange agreement with the City to exchange properties as shown on Engineering Services Exhibit "S" dated 6/22/04 and conveying the properties pursuant to the land exchange agreement.
 - b. No later than concurrently with the conveyance of land to applicant pursuant to the land exchange agreement with the City to exchange the properties, as shown on Engineering Services Exhibit "S" dated 6/22/04, the applicant shall compensate the City for the amount by which the fair market value of land conveyed to applicant exceeds the fair market value of land the applicant conveys to City, taking into consideration the acreage of the land.
 - c. The City Council adopted a Resolution of Vacation of portions of Weller Lane, North Main Street and Railroad Avenue since this land is proposed to be incorporated into the project, as shown on Engineering Services Exhibit "S" dated 6/22/04. Prior to building permit

issuance, the Resolution of the partial vacations of Weller Lane, North Main Street and Railroad Court as public roadway and public utility easement shall be recorded. (E)

50. **FLOOD ZONE.** Prior to any building permit issuance, the developer shall obtain a Letter of Map Amendment (LOMA) from FEMA to remove that portion of the project site that will become part of the property as part of the land-exchange with the City, from Special Flood Hazard Zone area. The underground parking structure as proposed is not permitted within the existing Special Flood Hazard Zone AH (elevation 12). (E)
51. **PARKING.** No on-street parking will be permitted on Weller Lane between Winsor and N. Main Street. Applicant shall install necessary no parking signs along that portion of Weller lane. (E)
52. **PUBLIC IMPROVEMENTS.** As provided for in the Land Exchange Agreement, the developer shall pay an in-lieu fee for the cost of the relocation of the wet Public Utilities (storm, water, sewer) at Weller Lane and a portion of the Main/Weller intersection signal modifications. The developer's obligation for payment in-lieu of designing and constructing the required improvements is set at \$144,910. In addition to the foregoing, developer shall design and construct any lateral connections to Public Utilities, which are necessary to provide services to the subject property. The developer shall design and install all improvements north of the curb and gutter along Weller, including the north curb and gutter, to the satisfaction of the City Engineer. All the streetscape improvements on the North side of Weller, including but not limited to street trees, decorative sidewalk paving, and street furniture such as benches, pedestrian lighting, bike shelters/racks, tree well grates and garbage receptacles, shall be consistent with the south-side improvements. The developer shall coordinate the design and construction of these improvements with the library Project. The in-lieu fee does not cover the cost of the removal of the abandoned public utility pipelines. The developer is responsible for the cost of the removal if deemed necessary for the development of the project. (E)
53. **PUBLIC IMPROVEMENTS.** Prior to any building permit issuance, the developer shall obtain design approval and provide a bond for all necessary public improvements along N. Main Street and Railroad Court, including but not limited to curb and gutter, pavement, sidewalk, undergrounding of existing overhead utilities, street tree planting, signage and striping, bus stops, street lights, fire hydrants, storm drain, sewer and water services, and street furniture improvements such as benches, pedestrian lighting, bike shelter/rack, tree well grates, and garbage receptacles along N. Main Street, and Railroad Avenue, as further shown on Engineering Services Exhibit "S", dated 6/22/2004. The developer shall also design and construct all improvements north of the curb and gutter along Weller, including the Weller Lane north curb and Gutter. The applicant shall construct subject improvements prior to building occupancy permit issuance. These required improvements shall comply with the City's Development standards and Design guidelines and Streetscape plans approved for Milpitas Midtown Specific Plan. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. To aid in project coordination, all maps, improvement plans, and other construction documents shall use Vertical Control that is based on NGVD 29 and Horizontal Control based on NAD83, and utilize the same Basis of Bearing of the maps and documents prepared for the City's library project. The developer shall also execute a public improvement agreement, the performance of which shall

be secured in an amount equal to 100% of the City Engineer's estimate of the construction cost for faithful performance and 100% of the City Engineer's estimate of the construction cost for labor & materials. (E)

54. CONSTRUCTION STAGING. The developer shall coordinate its construction schedule and activities with the City's Library project. No portion of City's property within the proposed library site will be available for construction staging without City's prior written approval. (E)
55. UTILITIES. Prior to building permit issuance, developer shall design all above ground utilities on Weller Lane (except for fire equipment which will remain in the landscape planter again south façade) to be relocated to a common area near the southeast corner tower. The plans shall include details of proper screening of the equipment without precluding rear building access. (E)
56. UTILITIES. Prior to building occupancy permit issuance the developer shall underground all existing wires on the utility poles number 2 to 5, and remove poles number 3, 4 and 5, as shown on the Engineering Services Exhibit "S", dated 6/22/2004. All proposed utilities within the proposed development shall also be undergrounded. Within 60 days of City Council approval of this project, the developer shall make an application with PG&E for its service connections to this site. The applicant is also required to design, construct and coordinate its dry utilities (phone, electric, gas, cable, etc.) construction with Library project and other affected agencies including but not limited to PG&E. At City's option, the City may underground the overhead wires between poles 2 and 5 and the developer is required to reimburse the City for the actual cost of this undergrounding. The undergrounding of overhead utilities is not covered by the fees described in Condition No. 52. (E)
57. GRADING PLAN. At the time of building permit plan check submittal the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities including overland flow as shown on the existing federal flood map. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior any building permit issuance. (E)
58. STORMWATER. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Construction activities that disturb one acre or greater are viewed as a source of pollution, and the RWQCB requires a Notice of Intent (NOI) be filed, along with obtaining an NPDES Construction Permit prior to the start of construction. A Storm Water Pollution Prevention Plan (SWPPP) and a site monitoring plan must also be developed by the applicant, and approved by the City prior to permit issuance for site clearance or grading. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)
59. UTILITIES. Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be

required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)

60. UTILITIES. Multistory buildings as proposed require water supply pressures above that which the City can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The Applicant shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)

61. UTILITIES. The developer shall submit the following items with the building permit application and pay the related fees prior to final inspection (occupancy) by the Building Division:

A. Water Service Agreement(s) for water meter(s) and detector check(s).

B. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.

Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s). (E)

62. SITE DISTANCE. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E)

63. UTILITIES. In accordance with Chapter 5, Title VIII (Ord. No. 238) of Milpitas Municipal Code, for new and/or rehabilitated landscaping 2500 square feet or larger the developer shall:

a. Provide separate water meters for domestic water service & irrigation service. Developer is also encouraged to provide separate domestic meters for each tenant.

b. Comply with all requirements of the City of Milpitas Water Efficient Ordinance (Ord. No. 238). Two sets of landscape documentation package shall be submitted by the developer or the landscape architect to the Building Division with the building permit plan check submittal. Approval from the Land Development Section of the Engineering Division is required prior to building permit issuance, and submittal of the Certificate of Substantial Completion is required prior to final occupancy inspection. (E)

Contact the Land Development Section of the Engineering Division at (408) 586-3329 for information on the submittal requirements and approval process. (E)

64. UTILITIES. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements. (E)

65. TRASH ENCLOSURE. Prior to occupancy permit issuance, the applicant shall construct trash enclosure(s), for Solid Waste Services. City Engineer's review and approval is required prior to construction of the trash enclosure. The proposed trash enclosure must meet the BFI criteria to support self-contained, roll-off compaction equipment for separate recycle and trash services, as listed below. Applicant advised that the following special conditions to support self-contained, roll-off compaction equipment for separate recycle and trash services shall be required due to limitations of enclosure location and mixed-use development:

a. Use of two, 25 cubic yard capacity, self-contained, roll-off compactors shall be used; one for trash and one for recyclables.

- b. Enclosure construction to include the following:
 - i. Interior dimensions of 23-feet X 24-feet.
 - ii. Walls and ceiling no lower than 10-feet in height.
 - iii. Conduit to support compactor hydraulics.
 - iv. Beam at inside enclosure median to support 2 sets of 12-foot length gates (doors at 6-feet each).
 - v. J-hooks with receiving holes at opened and closed positions for each gate.
 - vi. Compactor-compatible ground rails installed and extending 2-feet beyond and under the gates.
 - vii. Compactor-compatible 3 cubic yard, "pushable/trainable" front load bins.
 - c. Reinforced concrete pad for enclosure and service access shall:
 - i. Be minimum of 8-inch thick and accommodate not less than 60,000 pounds.
 - ii. Provide no greater than 2% slope at walkway between curb-cut and enclosure wall.
 - d. All other enclosure standards shall be required per the Development Guidelines for Solid Waste Services.
 - e. Service Frequency: Recycle and trash compactors may be placed on "on call" service during first occupancy phase. Estimated service frequency for recycle compactor at full occupancy is twice a week. Estimated service frequency for trash compactor at full occupancy is once a week. Scheduled once-a-week frequency shall apply for trash compactor upon achievement of 90% occupancy.
 - f. Effective Recycling Program Participation: Recycling compactor shall be charged at the higher, trash rate should "contaminates" (materials not accepted in City of Milpitas/BFI Residential Recycling Program), exceed 20% of each collection.
 - g. On-site Recycling Program Management: Adequate space for recycling shall be maintained within the residential "Trash Rooms" and commercial waste area, including effective separation from trash and liquids.
 - h. On-site Recycling Program Promotions: Residents and commercial tenants shall be advised of effective recycling program participation on a move-in and annual basis by the property manager.
 - i. Location of trash chutes and rooms is acceptable. Trash rooms shall not be less than 6-feet x 9-feet INTERIOR dimensions. (E)
66. TRASH ENCLOSURE. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for both commercial and residential use:
- a. Maintain an adequate level of service for trash collection.
 - b. Maintain recycling services including separate services for beverage containers.

After the applicant has started its business and building is occupied, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)

67. ENCROACHMENT PERMITS. Prior to any work within public right of way or City easement, the developer shall obtain necessary encroachment permit(s) from City of Milpitas Engineering Division. (E)
68. VACATION. Prior to any permit issuance, the developer shall successfully process an application through the City to vacate that excess portion of the existing Public Service Utility Easements along vacated Weller Lane, N. Main Street and Railroad Avenue. (E)
69. VIBRATION STUDY. Prior to building permit issuance, the applicant shall submit to the Planning Division a site-specific vibration analysis addressing the vibration impacts from the adjacent Union Pacific Railroad tracks from a qualified acoustical consultant. If at the time there is still no train running on the track closest to the project a sample will need to be taken from the other track that runs immediately east and adjacent to the subject track which the City is positive is operating. (P)
70. TIME EXTENSION. The executed agreements and conditions of approval associated with this project are based on the current cost sharing and coordination of all parcels proposed for development in this immediate area. Therefore, any future request for a time extension will necessitate re-review of the agreements and conditions of approval for possible modification to address changed circumstances. (P)

Planning Division = (P)

Engineering division = (E)

Transportation Division = (T)

Neighborhood Preservation = (NP)

**AMENDMENT NO. 1 TO AMENDED AND
RESTATED MEMORANDUM OF UNDERSTANDING**

(Apton Plaza)

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING is entered into by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (hereinafter "Agency") and Apton Properties, L.L.C., a California limited liability company (hereinafter "Participant") (collectively the "Parties").

RECITALS

WHEREAS, Participant is the property owner of that real property located at 230 North Main Street, Milpitas, more particularly described in the legal description attached hereto as Exhibit A attached herein and incorporated herein by this reference ("the Property").

WHEREAS, Participant initially intended to develop a rental apartment project on the Property that consisted of approximately 96 residential units ("the Initial Project"), and the Parties entered into that certain Memorandum of Understanding (Apton Plaza), dated September 24, 2004 ("the Prior MOU"), which set forth sets forth the Parties' agreement with respect to Participant's affordable housing obligations with respect to the Initial Project and further set forth additional conditions for the development of a housing project on the property and the rights and duties of the Parties respectively.

WHEREAS, Participant subsequently indicated a desire to the Agency to instead construct a 96-unit condominium project ("the Revised Project"), and the parties entered into the Amended and Restated Memorandum of Understanding, dated December 21, 2005 ("the MOU"), to reflect the Revised Project.

WHEREAS, Participant has indicated a desire to the Agency to revise the Project once again to reduce the number of units in the project from a total of 96 units to 93 units, and the parties now desire to amend the MOU to reflect additional revisions to the Revised Project.

AMENDMENT

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained herein and other good and valuable consideration the Parties understand and agree as follows:

Section 1. The third recital on page 1 of the MOU is amended to read as follows: "WHEREAS, Participant subsequently indicated a desire to the Agency to instead construct a 93-unit condominium project ("the Revised Project"), and the Agency is agreeable to such a change in the project provided that the Memorandum of Understanding and other associated agreements are revised to reflect the Revised Project."

Section 2. The seventh recital on page 1 of the MOU is amended to read as follows:
"WHEREAS, this MOU will result in the construction of 19 affordable housing units, of which 9 are very low-income units and 10 are moderate-income units."

IN WITNESS WHEREOF, Agency has by order of the Agency Board of the Directors caused this Amendment No. 1 to the Amended and Restated Memorandum of Understanding to be subscribed by the Executive Director of the Agency by Resolution No. _____ and attested by the City Clerk thereof, and Apton Properties, LLC has executed the same this _____ day of _____, 2005.

"AGENCY"

Redevelopment Agency of the
City of Milpitas

Executive Director

Attest:

City Clerk

Approved as to Form:

Agency Counsel

Apton Properties, L.L.C.

By:

Sam M. Valan

Its:

Manjiv Agarwal
Partner

EXHIBIT A
LEGAL DESCRIPTION

Recording requested by:
City of Milpitas

When recorded mail to:
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§ 6103, 27383

(Space Above This Line Reserved For Recorder's Use)

**AMENDMENT NUMBER TWO TO OWNER PARTICIPATION AGREEMENT
BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF
MILPITAS AND APTON PROPERTIES, LLC**

THIS AMENDMENT is entered into as of the 2nd day of August, 2005, by and between the REDEVELOPMENT AGENCY OF THE CITY OF MILPITAS, a public body, corporate and politic (the "Agency") and APTON PROPERTIES, LLC a California limited liability company (the "Participant") (collectively Agency and Participant are referred to as "Parties").

RECITALS

A. The Parties are parties to that certain Owner Participation Agreement by and between Redevelopment Agency of the City of Milpitas and Apton Properties, LLC, dated September 7, 2004 ("the Agreement"), and that certain Amendment Number One to the Agreement, dated December 21, 2004.

B. Participant owns that certain real property located at 230 North Main Street, Milpitas ("Site") more particularly described in the legal description in Exhibit A attached hereto and incorporated herein by this reference. Participant initially proposed on the Site and received approvals from the City for a mixed-use project that includes approximately 96-unit, multi-family condominium project of which 19 units shall be affordable for very low to moderate-income persons and households (hereinafter the "Project").

C. Participant now desires to develop a 93-unit, multi-family condominium project and has applied to the City for the appropriate amendments to the Project approvals, although the Project would still include 19 units that are affordable for very low to moderate-income persons.

D. The Parties therefore desire to amend the Agreement to reflect the Participant's revisions to the Project.

NOW, THEREFORE, in consideration of the foregoing Recitals and the covenants and promises hereinafter contained, and for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Agency and Participant hereby agree as follows:

AMENDMENT

Section 1. The last sentence of Recital B of the Agreement is amended to read as follows: "Participant has proposed on the Site a mixed-use project that includes approximately 93 multi-family units, of which 19 units shall be affordable to for very low to moderate-income persons and households (hereinafter the "Project")."

Section 2. Attachment No. 3 to the Agreement is replaced with Exhibit B attached hereto and labeled "Attachment No. 3, SCOPE OF DEVELOPMENT (PROJECT DESCRIPTION, CONCEPTUAL SITE PLAN & ELEVATIONS)."

Section 3. All other provisions of the Agreement shall remain in effect.

AGENCY:

Milpitas Redevelopment Agency

By: _____

Charles Lawson

Its: Executive Director

Attest:

Mary Lavalle, Agency Secretary

Approved as to form:

Steven T. Mattas, Agency Counsel

PARTICIPANT:

APTON PROPERTIES, a California limited liability company

By: *Barbara Adams*
Its: *Managing Member*

Exhibit B

REVISED ATTACHMENT 3 TO THE AGREEMENT, SCOPE OF DEVELOPMENT

ADDITIONAL ATTACHMENT
AVAILABLE AT THE
INFORMATION DESK